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FEDERAL REGISTER

Vol. 86 Thursday

No. 96 May 20, 2021

Pages 27261–27504

OFFICE OF THE FEDERAL REGISTER

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0370; Project Identifier MCAI–2021–00477–T; Amendment 39–21568; AD 2021–11–06]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by the loss of a windshield in flight, and the consequent rapid depressurization of the flight deck, which caused damage to flight deck items and systems and subsequent thermal shock and overheat, damage to windshield structural plies, and impaired structural integrity of the windshield. This AD requires repetitive inspections and electrical test measurements (EMTs) of affected windshields, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective June 4, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 4, 2021.

The FAA must receive comments on this AD by July 6, 2021.

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

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

For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0370.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0370; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0111, dated April 22, 2021 (EASA AD 2021–0111) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A318, A319, and A321 series airplanes; and Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes. Model 320–215 airplanes, which are included in the applicability of EASA AD, are not certificated by the FAA and are not included on the U.S. type certificate data sheet; those airplanes are therefore not included in applicability of this AD.

This AD was prompted by the loss of the right windshield in flight on a Model A319 series airplane. The consequent rapid depressurization of the flight deck caused damage to flight deck items and systems and led to a significant increase in flightcrew workload. Investigations into the incident identified several contributing factors, including manufacturing variability, fretting between windshield components, water ingress, and corrosion of electrical braids. The subsequent thermal shock and overheat damaged more than one of the windshield structural plies and impaired the structural integrity of the windshield. Failure of the windshield could result in injury to the flightcrew and depressurization of the airplane, which could cause loss of control of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0111 specifies procedures for repetitive detailed inspections of affected windshields for defects including delamination or bubbles on the windshield and signs of water ingress and corrosion damage of the windshield connector, EMTs (dielectric and insulation tests) of the windshields for potential wiring insulation damage and core degradation, and replacement of windshields that fail an inspection or EMT. EASA AD 2021–0111 also specifies reporting inspection and test results to Airbus. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the

FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0111 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2021–0111 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2021–0111 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2021–0111 that is required for compliance with EASA AD 2021–0111 is available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0370.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because impaired structural integrity of the windshield could lead to failure of the windshield, possibly resulting in injury to the flightcrew and in-flight depressurization of the airplane, which would require exceptional piloting skill to maintain control the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0370; Project Identifier MCAI–2021–00477–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,728 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$0	$255	Up to $440,640.

* The table does not include estimated costs for reporting.

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $146,880, or $85 per product.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
10 work-hours × $85 per hour = $850	$12,990	$13,840

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–11–06 Airbus SAS: Amendment 39–21568; Docket No. FAA–2021–0370; Project Identifier MCAI–2021–00477–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

(1) All Model A318–111, A318–112, A318–121, and A318–122 airplanes.

(2) All Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, and A319–171N airplanes.

(3) All Model A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, and A320–273N airplanes.

(4) All Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–252N, A321–253N, A321–251NX, A321–252NX, A321–253NX, A321–271N, A321–272N, A321–271NX, and A321–272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Reason

This AD was prompted by the loss of a windshield in flight, and the consequent rapid depressurization of the flight deck, which caused damage to flight deck items and systems and subsequent thermal shock and overheat, damage to windshield structural plies, and impaired structural integrity of the windshield. The FAA is issuing this AD to prevent failure of the windshield, which could result in injury to the flightcrew and in-flight depressurization of the airplane, and would require exceptional piloting skill to maintain control the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0111, dated April 22, 2021 (EASA AD 2021–0111).

(h) Exceptions to EASA AD 2021–0111

(1) Where EASA AD 2021–0111 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0111 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0111, dated April 22, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0111, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0370.

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

Issued on May 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10590 Filed 5–17–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0568; Project Identifier 2019–NE–20–AD; Amendment 39–21542; AD 2021–10–09]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all CFM International, S.A. (CFM) CFM56–5B and CFM56–7B model turbofan engines with a certain high-pressure turbine (HPT) inner stationary seal installed. This AD was prompted by cracks found in the rotating air HPT front seal. This AD requires removal, inspection, and replacement of the affected HPT inner stationary seal and, depending on the findings, replacement of the rotating air HPT front seal, HPT rotor blades, and No. 3 ball bearing. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 24, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 24, 2021.

ADDRESSES: For service information identified in this final rule, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; fax: (877) 432–3329; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0568.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0568; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7120; fax: (781) 238–7199; email: *chris.mcguire@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all CFM CFM56–5B and CFM56–7B model turbofan engines with a certain HPT inner stationary seal installed. The NPRM published in the **Federal Register** on September 20, 2019 (84 FR 49487). The NPRM was prompted by a report that two cracks were discovered on a CFM CFM56–5B model turbofan engine rotating air HPT front seal during a routine engine shop visit. After investigation, CFM determined that the HPT inner stationary seal, part number 1808M56G01, may not have received the correct braze heat treat cycle at the time of the honeycomb replacement. As a result, the affected HPT inner stationary seal could lead to a localized separation of the replaced honeycomb, which may reduce the life of the rotating air HPT front seal. In the NPRM, the FAA proposed to require removal, inspection, and replacement of the affected HPT inner stationary seal and, depending on the findings, replacement of the rotating air HPT front seal, HPT rotor blades, and No. 3 ball bearing. The FAA is issuing this AD

to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from nine commenters. The commenters were Air Line Pilots Association, International (ALPA); American Airlines (AAL); Azur Aviation (Azur); The Boeing Company (Boeing); CFM; Delta Air Lines, Inc. (Delta); United Airlines (UAL); MTU Maintenance Canada (MTU) and Magnetic MRO. Four of the nine commenters requested changes that resulted in updates to this AD. Three commenters requested clarification on definitions. Two commenters requested updates to the service information. Two commenters expressed support for the AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Parts That Can Be Returned to Service

Azur requested that the FAA clarify the parts that can be returned to service after removal. Azur reasoned that paragraph (g)(1) of this AD requires that an HPT inner stationary seal be removed from service and replaced with either a part that is not listed in the service information or a repaired part identified in paragraph (h)(2), Definitions, of this AD. In contrast, paragraphs (g)(3)(i) and (iii) of this AD, respectively, indicate only to remove the rotating air HPT front seal and No. 3 ball bearing from service and replace them with a ''part eligible for installation.''

Azur suggested adding one of the following to this AD to remove the ambiguity: (1) Remove ''remove from service'' from paragraph (g)(1) of this AD; (2) Identify rotating air HPT front seals and No. 3 ball bearings that are not eligible for installation; (3) Add an ''Installation Prohibition'' paragraph for the removed rotating air HPT front seal and No. 3 ball bearing; (4) Indicate what to do with the removed rotating air HPT front seal and No. 3 ball bearing in paragraphs (g)(3)(i) and (iii) of this AD, such as discard these parts; or (5) Identify instruction for the removed rotating air HPT front seals and No. 3 ball bearings.

Use of ''remove from service'' in this AD indicates that the rotating air HPT front seal and No. 3 ball bearing should no longer be installed on an engine. Therefore, neither the removed rotating air HPT front seal nor the removed No. 3 ball bearing can be repaired and returned to service. The FAA, however, updated paragraph (h), Definitions, of this AD, to clarify that a part eligible for installation for both a rotating air HPT front seal and a No. 3 ball bearing refers to parts that were not removed from service based on the findings of honeycomb separation of the HPT inner stationary seal. The FAA also updated paragraph (g)(1) of this AD to remove ''remove from service'' to clarify that the HPT inner stationary seal can be repaired and returned to service. The FAA also moved the definition of an HPT inner stationary seal that is eligible for installation from paragraph (g)(1) to paragraph (h)(1) of this AD.

Request To Update the Definition of Engine Shop Visit

AAL, Delta, and UAL requested updates or clarification of the definition of an ''engine shop visit'' provided in paragraph (h)(1) of this AD.

AAL requested that the FAA update the definition of an engine shop visit to clarify circumstances that are not an engine shop visit. AAL reasoned that CFM Service Bulletin (SB) CFM56–7B S/B 72–0972 provides guidance on when AD mandated actions can be accomplished to avoid undue burden on operators, specifically in circumstances when engines are inducted to the shop for quick corrective action, such as repair for foreign object damage.

UAL requested that the FAA update the definition of an engine shop visit to specify which major mating engine case flanges need to be separated to be an engine shop visit as defined. UAL stated that the ambiguity of the ''major mating engine case flange'' may result in an inspection of the HPT inner stationary seal for honeycomb separation when the core is not exposed, such as during fan case replacement.

Delta recommended that the manufacturer define ''engine shop visit'' in its service information.

The FAA agrees that the definition of an engine shop visit in this AD does not include the separation of engine flanges solely for the purpose of transportation of the engine or replacing the fan or propulsor without subsequent maintenance. All other separations of major mating engine case flanges are an engine shop visit, as defined, and require removal, replacement, and inspection of the HPT inner stationary seal as required by paragraphs (g)(1) and (2) of this AD. The FAA changed the definition of ''engine shop visit'' in paragraph (h) this AD to clarify the definition of an engine shop visit.

The FAA did not revise this AD in response to Delta's comment. The FAA notes, however, that in CFM Service Bulletin (SB) CFM56–5B S/B 72–0952, Revision 01, and CFM SB CFM56–7B S/B 72–1054, Revision 01, both dated January 15, 2020, the manufacturer updated the SBs to clarify that the quick turn shop visit type is not included in the SB's definition of ''shop visit.''

Request To Change Inspection of HPT Rotor Blade To Remove Debris

AAL requested that the FAA change paragraph (g)(3)(ii) of this AD to ''Remove the HPT rotor blade from service and inspect per CFM56–7B CFMI–TP.SM.10 Engine Shop Manual (ESM) 72–52–01–09 High Pressure Turbine Rotor Blades—Inspection 001 or replace with parts eligible for installation.'' AAL reasoned that the HPT rotor blade collects various types of debris over its service life, so attempting to determine if the debris is honeycomb material based upon a general visual inspection is subjective and open to interpretation. Therefore, AAL suggested that removing the HPT rotor blades would ensure that the repair facility could remove the debris in the internal cavities and return the HPT rotor blades to service.

Since the NPRM was published, the manufacturer revised the service information, removing the inspection of the HPT rotor blade internal cavities for honeycomb metal debris. As a result, the FAA changed paragraph (g)(3)(ii) of this AD to eliminate the requirement to inspect the HPT rotor blade internal cavities for honeycomb metal debris. The FAA also removed the estimated cost associated with the inspection of the HPT rotor blade internal cavities for honeycomb metal debris from this AD.

Request To Clarify Reason To Replace No. 3 Ball Bearing

Magnetic MRO requested clarification for the reason to replace the No. 3 ball bearing if metal debris is found in the HPT blade cavities.

In the NPRM, the FAA proposed to require replacement of the No. 3 ball bearing if honeycomb separation was found during the inspection required by paragraph (g)(2) of this AD. The replacement of the No. 3 ball bearing is not linked to a finding of debris in the HPT rotor blade internal cavities but is required if honeycomb separation is found. Honeycomb separation results in increased secondary air flow impinging on the rotating air HPT front seal, which increases the axial load on the No. 3 ball bearing. This increased axial load impacts the durability of the No. 3 ball bearing. The FAA did not change this AD based on this comment.

Request To Add a Terminating Action

AAL requested that the FAA update paragraph (g)(1) of this AD to include, ''Accomplishment of these instructions are considered terminating action to this AD.'' AAL reasoned that this statement provides specific closure since the corrective action has been clearly defined and approved by the FAA. AAL suggested this maintenance action is not recurring and, as such, would constitute an appropriate terminating action.

The FAA disagrees with adding the terminating action statement. Performing the actions required by this AD achieves compliance with this AD. A statement of terminating action is unnecessary.

Request To Clarify Compliance

MTU commented that this AD describes actions to be performed if damage is found, but does not describe actions to be performed when damage is not found as specified in CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020. MTU asked if the AD could reference action that needs to be performed when the engine is inducted and disassembled for reasons other than HPT inner stationary seal issue and damage (or no damage) is found.

The FAA disagrees with requiring actions that are not related to the unsafe condition described in this AD. The HPT inner stationary seal is not typically exposed unless the engine is undergoing an engine shop visit. However, if damage to the HPT inner stationary seal is found during inspections not related to this AD, the ESM provides criteria to determine appropriate action.

Request To Incorporate AC 20–176A in Service Information

AAL and Delta requested that CFM incorporate AC 20–176A into both CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, and CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020, for the purpose of ''. . . distinguishing which steps in an SB will have a direct effect on detecting, preventing, resolving, or eliminating the unsafe condition identified in an AD.'' The commenters reasoned that CFM should identify the steps required for compliance (RC) in the service information. AAL added that the RC designation reduces global AMOCs and streamlines the accomplishment of key tasks while meeting strict regulatory compliance.

The FAA agrees that adding the RC designation to the required service information steps provides clarity to the operators. CFM added the RC designation to CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, and CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020. The FAA did not change this AD.

Request To Update References to the ESM

Delta requested that the FAA update paragraphs (c)(2) and (h)(2) of this AD to reference the CFM56–5B ESM and the CFM56–7B ESM entirely, rather than specific repair tasks within the ESMs. Delta reasoned that the CFM56–5B ESM and CFM56–7B ESM might change in future revisions.

The FAA disagrees with changing the references from the specific repair tasks. Paragraph (c)(2), Applicability, and paragraph (h)(2), Definitions, of this AD refer to specific repair tasks within CFM56–5B ESM and CFM56–7B ESM that are required to return a HPT inner stationary seal to service. The FAA did not change this AD, but will consider requests for AMOCs if the repair tasks change in future revisions of the ESM.

Comment on Revising Service Information

CFM stated that they would update CFM SB CFM56–5B S/B 72–0952 and CFM SB CFM56–7B S/B 72–1054 based on feedback from operators. CFM indicated it would update the definition of ''shop visit'' to clarify that replacing a fan disk is not considered a shop visit. CFM further indicated that it would clarify that if honeycomb separation is found, then the HPT blades may be scrapped or overhauled. Finally, CFM noted that it would revise the SBs by adding ''RC'' to those tasks required for compliance.

The FAA notes that it has revised this AD by referring to CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, and CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020. In addition, the FAA has reviewed the changes included in Revision 01 of these SBs and determined that these are clarifying changes only and impose no additional burden to operators.

Request To Allow Use of Later Revisions of Service Information

AAL and Delta requested that the FAA add the phrase ''or later'' when referencing the service information in this AD. AAL stated that specifying ''or later'' could prevent numerous requests for alternative methods of compliance (AMOCs) if the manufacturer revises the service information. AAL also stated that this request aligns with paragraph 2–3.d of Advisory Circular No. 20–176A, ''Service Bulletins Related to Airworthiness Directives and Indicating FAA Approval on Service Documents,'' dated June 16, 2014 (AC 20–176A).

The FAA disagrees with adding language that allows the use of later revisions of service information when performing the required actions of this AD. Later revisions of the service information have not been reviewed by the FAA. As noted, however, in a previous comment response, the FAA has revised this AD by referring to the latest published revisions of the referenced service information.

Support for No Reporting Requirement

AAL expressed support for the No Reporting Requirement in paragraph (i) of this AD.

Support for the AD

ALPA and Boeing expressed support for the AD as written.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, and CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020. CFM SB CFM56–5B S/B 72–0952, Revision 01, describes procedures for repairing the CFM56–5B turbofan engine HPT inner stationary seal honeycomb. CFM SB CFM56–7B S/B 72–1054, Revision 01, describes procedures for repairing the CFM56–7B turbofan engine HPT inner stationary seal honeycomb. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 210 engines installed on airplanes of U.S. registry. Operators have the option to replace or repair the affected HPT inner stationary seal. The part cost is for replacement with a repaired HPT inner stationary seal.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT inner stationary seal	1 work-hour × $85 per hour = $85	$7,910	$7,995	$1,678,950
Inspect HPT inner stationary seal	1 work-hour × $85 per hour = $85	0	85	17,850

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace rotating air HPT front seal	1 work-hour × $85 per hour = $85	$344,600	$344,685
Replace HPT rotor blades (pair)	1 work-hour × $85 per hour = $85	31,000	31,085
Replace No. 3 ball bearing	1 work-hour × $85 per hour = $85	30,000	30,085

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–10–09 CFM International, S.A.: Amendment 39–21542; Docket No. FAA–2019–0568; Project Identifier 2019–NE–20–AD.

(a) Effective Date

This airworthiness directive (AD) is effective June 24, 2021.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all CFM International, S.A. (CFM) CFM56–5B1, –5B1/2P, –5B1/3, –5B1/P, –5B2, –5B2/2P, –5B2/3, –5B2/P, –5B3/2P, –5B3/2P1, –5B3/3, –5B3/3B1, –5B3/P, –5B3/P1, –5B4, –5B4/2P, –5B4/2P1, –5B4/3, –5B4/3B1, –5B4/P, –5B4/P1, –5B5, –5B5/3, –5B5/P, –5B6, –5B6/2P, –5B6/3, –5B6/P, –5B7, –5B7/3, –5B7/P, –5B8/3, –5B8/P, –5B9/2P, –5B9/3, –5B9/P, CFM56–7B20, –7B20/2, –7B20/3, –7B20E, –7B22, –7B22/2, –7B22/3, –7B22/3B1, –7B22/B1, –7B22E, –7B22E/B1, –7B24, –7B24/2, –7B24/3, –7B24/3B1, –7B24/B1, –7B24E, –7B24E/B1, –7B26, –7B26/2, –7B26/3, –7B26/3B1, –7B26/3B2, –7B26/3B2F, –7B26/3F, –7B26/B1, –7B26/B2, –7B26E, –7B26E/B1, –7B26E/B2, –7B26E/B2F, –7B26E/F, –7B27, –7B27/2, –7B27/3, –7B27/3B1, –7B27/3B1F, –7B27/3B3, –7B27/3F, –7B27/B1, –7B27/B3, –7B27A, –7B27A/3, –7B27AE, –7B27E, –7B27E/B1, –7B27E/B1F, –7B27E/B3, and –7B27E/F model turbofan engines with a high-pressure turbine (HPT) inner stationary seal, part number (P/N) 1808M56G01 installed that has a serial number (S/N) listed in Planning Information, Paragraph 1.A., Table 1, of CFM Service Bulletin (SB) CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, or in Planning Information, Paragraph 1.A., Table 1, CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020, installed.

(2) This AD does not apply to affected CFM CFM56–5B and CFM56–7B model turbofan engines with the affected HPT inner stationary seal installed if the seal has been repaired as specified in CFM56–5B Engine Shop Manual (ESM), 72–41–03, REPAIR 003, or CFM56–7B ESM, 72–41–03, REPAIR 003, after the year listed in Paragraph 1.A., Table 1, of CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, or Paragraph 1.A., Table 1, CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by cracks found in the rotating air HPT front seal. The FAA is issuing this AD to prevent failure of the HPT inner stationary seal and the rotating air HPT front seal. The unsafe condition, if not addressed, could result in uncontained release of the rotating air HPT front seal, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the next engine shop visit after the effective date of this AD, remove the affected HPT inner stationary seal and replace with a HPT inner stationary seal that is eligible for installation.

(2) After removing the affected HPT inner stationary seal required by paragraph (g)(1), inspect the removed HPT inner stationary seal for honeycomb separation, as defined in the Accomplishment Instructions, paragraph 3.C.(1), in CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, or in CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020.

(3) If honeycomb separation is found during the inspection required by paragraph (g)(2) of this AD, before further flight:

(i) Remove the rotating air HPT front seal from service and replace with a rotating air HPT front seal that is eligible for installation.

(ii) Remove the HPT rotor blades and replace them with HPT rotor blades eligible for installation.

(iii) Remove the No. 3 ball bearing from service and replace with a No. 3 ball bearing eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit.

(i) Separation of engine flanges solely for the purpose of transportation of the engine without subsequent maintenance.

(ii) Separation of engine flanges solely for the purpose of replacing the fan or propulsor without subsequent maintenance.

(2) For the purpose of this AD, an HPT inner stationary seal that is eligible for installation is an HPT inner stationary seal:

(i) That is not listed in Planning Information, Paragraph 1.A., Table 1, of CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, or in Planning Information, Paragraph 1.A., Table 1, CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020; or

(ii) with a P/N 1808M56G01 and with a S/N listed in Paragraph 1.A., Table 1, of CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, or Paragraph 1.A., Table 1, CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020, that has been repaired per CFM56–5B ESM, 72–41–03, REPAIR 003, or CFM56–7B ESM, 72–41–03, REPAIR 003, after the year listed in Paragraph 1.A., Table 1, of CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, or Paragraph 1.A., Table 1, CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020.

(3) For the purpose of this AD, a rotating air HPT front seal that is eligible for installation is any rotating air HPT front seal that was not removed from service as a result of the inspection of the HPT inner stationary seal required by paragraph (g)(2) of this AD in which there was a finding of honeycomb separation.

(4) For the purpose of this AD, HPT rotor blades eligible for installation are new HPT rotor blades with zero flight hours since news or HPT rotor blades that have been inspected and returned to a serviceable condition using approved engine manual requirements.

(5) For the purpose of this AD, a No. 3 ball bearing eligible for installation is any No. 3 ball bearing that was not removed from service as a result of the inspection of the HPT inner stationary seal required by paragraph (g)(2) of this AD in which there was a finding of honeycomb separation.

(i) No Reporting Requirement

The reporting requirements contained within the SBs referenced in paragraph (g) of this AD are not required by this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Christopher McGuire, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7120; fax: (781) 238–7199; email: *chris.mcguire@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) CFM Service Bulletin CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020.

(ii) CFM Service Bulletin CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020.

(3) For CFM service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; fax: (877) 432–3329; email: *aviation.fleetsupport@ge.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

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

Issued on April 29, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10607 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0143; Product Identifier 2019–SW–024–AD; Amendment 39–21547; AD 2021–10–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH Model BO–105A, BO–105C, BO–105S, and BO–105LS A–3 helicopters. This AD was prompted by the FAA's determination that aging of the elastomeric material in a tension torsion strap (TT-strap) could affect the structural characteristics of the TT-strap. This AD requires replacement of certain TT-straps with serviceable parts and implementation of a new storage life limit for TT-straps, as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 24, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 24, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information

on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0143.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0143; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Blaine Williams, Aviation Safety Engineer, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712 4137; telephone 562–627–5371; email *blaine.williams@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0024, dated February 4, 2019 (EASA AD 2019–0024) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Helicopters Deutschland GmbH Model BO–105A, BO–105C, BO–105D, BO–105S, and BO–105LS A–3 helicopters. Model BO–105D helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Deutschland GmbH Model BO–105A, BO–105C, BO–105S, and BO–105LS A–3 helicopters. The NPRM published in the **Federal Register** on March 12, 2021 (86 FR 14023). The NPRM was prompted by the FAA's determination that aging of the elastomeric material in a tension TT-strap could affect the structural characteristics of the TT-strap. The NPRM proposed to require replacement of certain TT-straps with serviceable parts and implementation of a new storage life limit for TT-straps, as specified in an EASA AD.

The FAA is issuing this AD to address aging of the elastomeric material in a TT-strap, which could lead to premature failure of a TT-strap, resulting in loss of control of the helicopter. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2019–0024 specifies procedures for replacing certain TT-straps with serviceable parts and requires a storage life limit for TT-straps. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the MCAI

Although EASA AD 2019–0024 does not specify a life limit for the Lord TT-Straps part number (P/N) J17322–1 and P/N 117–14111, this AD does specify a life limit for those parts.

Where EASA AD 2019–0024 specifies that installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before the storage life of that Lord TT-Strap exceeds 5 years, for this AD, the installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before 5 years since the TT-strap's date of manufacture.

Where EASA AD 2019–0024 defines ''serviceable part'' as a Lord TT-Strap having a storage life not exceeding 5 years, for this AD, a serviceable part is Lord TT-straps P/N J17322–1 and P/N 117–14111 having less than 5 years since that TT-strap's date of manufacture.

Where EASA AD 2019–0024 specifies that the ''cure date'' of a TT-Strap can be determined using the information provided in the applicable service information specified in EASA AD 2019–0024, or contacting Airbus Helicopters for applicable instructions, for this AD, the option of contacting Airbus Helicopters is not required.

Costs of Compliance

The FAA estimates that this AD affects 61 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	Up to $4,800	Up to $5,140	Up to $313,540.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–10–14 Airbus Helicopters Deutschland GmbH: Amendment 39–21547; Docket No. FAA–2021–0143; Product Identifier 2019–SW–024–AD.

(a) Effective Date

This airworthiness directive (AD) is effective June 24, 2021.

(b) Affected ADs

This AD affects AD 2016–25–14, Amendment 39–18740 (81 FR 94944, December 27, 2016) (AD 2016–25–14).

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model BO–105A, BO–105C, BO–105S, and BO–105LS A–3 helicopters, certificated in any category, equipped with a tension torsion strap (TT-strap) as identified in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2019–0024, dated February 4, 2019 (EASA AD 2019–0024).

(d) Subject

Joint Aircraft System Component (JASC) Code 6200, Main Rotor System.

(e) Reason

This AD was prompted by the FAA's determination that aging of the elastomeric material in a TT-strap could affect the structural characteristics of the TT-strap. The FAA is issuing this AD to address aging of the elastomeric material in a TT-strap, which could lead to premature failure of a TT-strap, resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0024.

(h) Exceptions to EASA AD 2019–0024

(1) Where EASA AD 2019–0024 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0024 does not apply to this AD.

(3) Where EASA AD 2019–0024 and the service information referenced in EASA AD 2019–0024 specify contacting Airbus Helicopters Deutschland if the storage time for a TT-strap is equal to or greater than 5 years, this AD requires repair using a method approved by the Manager, International Validation Branch, FAA. For a repair method to be approved by the Manager, International Validation Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(4) Although the service information referenced in EASA AD 2019–0024 specifies to scrap certain parts, this AD requires removing those parts from service instead.

(5) Where paragraph (1) of EASA AD 2019–0024 specifies to replace each Lord TT-Strap and Bendix TT-Strap ''in accordance with the instructions of the applicable ASB,'' the replacement must be done using FAA-approved procedures.

(6) Where EASA AD 2019–0024 refers to the airworthiness limitations items of the airworthiness limitations section of the aircraft maintenance manual (AMM) for the definition of service life limit (SLL), this AD requires using the life limits specified in paragraphs (h)(6)(i) through (iii) of this AD, as applicable:

(i) For Bendix TT-Strap part number (P/N) 2604067 and P/N 117–14110: Before 10 years or 40,000 flight cycles on the part, whichever occurs first.

(ii) For Bendix TT-Strap P/N 2602559 and P/N 2606576: Before 10 years, 2,400 hours time-in-service, or 40,000 flight cycles on the part, whichever occurs first.

(iii) For Lord TT-Strap P/N J17322–1 and P/N 117–14111: Before 12 years or 40,000 flight cycles on the part, whichever occurs first.

(7) Where paragraph (3) of EASA AD 2019–0024 specifies that installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before the storage life of that Lord TT-Strap exceeds 5 years, for this AD, the installation of a Lord TT-Strap is allowed provided the first flight of that helicopter after that installation is accomplished before 5 years since the TT-strap's date of manufacture.

(8) Where EASA AD 2019–0024 defines ''serviceable part'' as a Lord TT-Strap having a storage life not exceeding 5 years, for this AD, a serviceable part is Lord TT-straps P/N J17322–1 and P/N 117–14111 having less than 5 years since that TT-strap's date of manufacture.

(9) Where EASA AD 2019–0024 specifies that the ''cure date'' of a TT-Strap can be determined using the information provided in the applicable service information specified in EASA AD 2019–0024, or contacting Airbus Helicopters for applicable instructions, for this AD, the option of contacting Airbus Helicopters is not required.

(i) Repetitive Replacement

After accomplishing the replacement specified in paragraph (1) of EASA AD 2019–0024, thereafter, replace the Lord TT-straps P/N J17322–1 and P/N 117–14111, at intervals not to exceed: Before 12 years or 40,000 flight cycles on the part, whichever occurs first.

(j) Terminating Action for AD 2016–25–14

For Model B0–105LS A–3 helicopters: After accomplishing the replacement specified in paragraph (1) of EASA AD 2019–0024 all of the actions required by AD 2016–15–14 are terminated for that helicopter only.

(k) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

For more information about this AD, contact Blaine Williams, Aviation Safety Engineer, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712 4137; telephone 562–627–5371; email *blaine.williams@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) European Aviation Safety Agency (EASA) AD 2019–0024, dated February 4, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0024, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0143.

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

Issued on April 30, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10605 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0105; Project Identifier MCAI–2020–01422–R; Amendment 39–21543; AD 2021–10–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model SA330J helicopters. This AD was prompted by the failure of a second stage planet gear installed in the main gearbox (MGB). This AD requires repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, analyzing any metal particles that are found, and replacement of the MGB if necessary, as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 24, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 24, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0105.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0105; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0272, dated December 13, 2018 (EASA AD 2018–0272) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model SA330J helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model SA330J helicopters. The NPRM published in the **Federal Register** on March 2, 2021 (86 FR 12127). The NPRM was prompted by the failure of a second stage planet gear installed in the MGB. The NPRM proposed to require repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, analyzing any metal particles that are found, and replacement of the MGB if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address failure of an MGB second stage planet gear, which could result in failure of the MGB and subsequent loss of control of the helicopter. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2018–0272 specifies procedures for repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, analyzing any metal particles that are found, and replacement of the MGB if necessary. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 15 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	$0	$425	$6,375

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
40 work-hours × $85 per hour = $3,400	$600,000 (overhauled)	$603,400

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–10–10 Airbus Helicopters: Amendment 39–21543; Docket No. FAA–2021–0105; Project Identifier MCAI–2020–01422–R.

(a) Effective Date

This airworthiness directive (AD) is effective June 24, 2021.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model SA330J helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 6320, Main Rotor Gearbox.

(e) Reason

This AD was prompted by a failure of a second stage planet gear installed in the main gearbox (MGB). The FAA is issuing this AD to address failure of an MGB second stage planet gear, which could result in failure of the MGB and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0272, dated December 13, 2018 (EASA AD 2018–0272).

(h) Exceptions to EASA AD 2018–0272

(1) Where EASA AD 2018–0272 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2018–0272 refers to March 30, 2018 (the effective date of EASA AD 2018–0065, dated March 23, 2018), this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2018–0272 does not apply to this AD.

(4) Where EASA AD 2018–0272 refers to flight hours (FH), this AD requires using hours time-in-service.

(5) Where paragraph (1) of EASA AD 2018–0272 specifies to inspect the MGB particle detector ''in accordance with the instructions of Section 3 of the ASB'' for this AD use ''in accordance with the instructions in step 3.B.2.a. of the ASB.''

(6) Where paragraph (2) of EASA AD 2018–0272 specifies to inspect the MGB bottom housing (oil sump) ''in accordance with the instructions of Section 3 of the ASB'' for this AD use ''in accordance with the instructions in step 3.B.2.b. of the ASB.''

(7) Where the service information referenced in EASA AD 2018–0272 specifies to perform a metallurgical analysis and contact the manufacturer if unsure about the characterization of the particles collected, this AD does not require contacting the manufacturer to determine the characterization of the particles collected.

(8) Although the service information referenced in EASA AD 2018–0272 specifies that if any 16NCD13 particles are found to contact the manufacturer and send a 1-liter sample of oil to the manufacturer, this AD does not require that action.

(9) Although the service information referenced in EASA AD 2018–0272 specifies returning certain parts to the manufacturer, this AD does not require that action.

(10) Where EASA AD 2018–0272 specifies actions be done after the last flight of the day or ''ALF,'' this AD requires doing those actions before the first flight of the day.

(11) Although the service information referenced in EASA AD 2018–0272 specifies discarding certain parts, this AD requires removing the parts from service.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be modified (if the operator elects to do so), provided that the helicopter is operated during the day, under visual flight rules, and with no passengers onboard.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Aviation Safety Agency (EASA) AD 2018–0272, dated December 13, 2018.

(ii) [Reserved]

(3) For EASA AD 2018–0272, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* Internet: *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0105.

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

Issued on May 3, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10608 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 596

Terrorism List Governments Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Terrorism List Governments Sanctions Regulations to implement changes resulting from the Secretary of State's December 14, 2020 rescission of the designation of Sudan as a State Sponsor of Terrorism. Specifically, OFAC is removing one general license in full and amending another general license to remove references to the Government of Sudan and Sudanese nationals because financial transactions with the Government of Sudan are no longer prohibited by the Terrorism List Governments Sanctions Regulations.

DATES: This rule is effective May 20, 2021.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

On August 12, 1993, in accordance with section 6(j) of the Export Administration Act of 1979, then codified at 50 U.S.C. App. 2405(j), the Secretary of State designated Sudan as a State Sponsor of Terrorism (58 FR 52523, October 8, 1993).

On August 22, 1996, OFAC promulgated the Terrorism List Governments Sanctions Regulations, 31 CFR part 596 (61 FR 43462, August 23, 1996) (the ''Regulations''), to implement section 321 of the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2332d).

On July 1, 1998, OFAC issued the Sudanese Sanctions Regulations, 31 CFR part 538 (63 FR 35809, July 1, 1998) (SSR), to implement Executive Order (E.O.) 13067 of November 3, 1997, ''Blocking Sudanese Government Property and Prohibiting Transactions With Sudan'' (62 FR 59989, November 5, 1997), in which the President declared a national emergency with respect to the policies and actions of the Government of Sudan. To deal with that threat, E.O. 13067 imposed comprehensive trade sanctions with respect to Sudan and blocked all property and interests in property of the Government of Sudan in the United States or within the possession or control of United States persons. The SSR were amended on various occasions to, among other things, implement further Executive orders, including E.O. 13412 of October 13, 2006, ''Blocking Property of and Prohibiting Transactions with the Government of Sudan'' (71 FR 61369, October 17, 2006), and add additional authorizations.

Effective October 12, 2017, sections 1 and 2 of E.O. 13067 and all of E.O. 13412 were revoked, pursuant to E.O. 13761 of January 13, 2017, ''Recognizing Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions'' (82 FR 5331, January 18, 2017), as amended by E.O. 13804 of July 11, 2017, ''Allowing Additional Time for Recognizing Positive Actions by the Government of Sudan and Amending

Executive Order 13761'' (82 FR 32611, July 14, 2017). Consistent with the revocation of these sanctions authorities, OFAC removed the SSR from the Code of Federal Regulations on June 29, 2018.

Pursuant to section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7205) (TSRA), following the revocation of the SSR, OFAC authorization was still required for certain exports and reexports to Sudan of agricultural commodities, medicine, and medical devices as a result of Sudan's status as a State Sponsor of Terrorism. Effective October 12, 2017, OFAC issued on its website General License A, which authorized exports and reexports of these items to Sudan. When OFAC revoked the SSR, OFAC simultaneously amended the Regulations to incorporate the provisions of General License A into § 596.506.

On October 26, 2020, consistent with sections 1754(c) and 1768(c) of the National Defense Authorization Act for Fiscal Year 2019 (50 U.S.C. 4813(c) and 4826(c)), the President certified and reported to Congress that the Government of Sudan had not provided any support for acts of international terrorism during the preceding six-month period and that the Government of Sudan had provided assurances that it would not support acts of international terrorism in the future (Presidential Report of October 26, 2020: Certification of Rescission of Sudan's Designation as a State Sponsor of Terrorism). This Certification also satisfied the provisions of section 620A(c)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(c)(2)), section 40(f)(1)(B) of the Arms Export Control Act of 1976 (22 U.S.C. 2780(f)(1)(B), and, to the extent applicable, section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), as continued in effect by Executive Order 13222 of August 17, 2001, ''Continuation of Export Control Regulations.'' Effective December 14, 2020, based on the considerations contained in the memorandum accompanying the Presidential Report of October 26, 2020 regarding Sudan and in accordance with applicable law, the Secretary of State rescinded Sudan's designation as a State Sponsor of Terrorism (85 FR 82565, December 18, 2020). In accordance with the December 14, 2020 rescission of the designation of Sudan as a State Sponsor of Terrorism, this rule amends the Regulations to remove references to the Government of Sudan and Sudanese nationals in § 596.505 because financial transactions with the Government of Sudan are no longer prohibited by the Regulations, and to remove § 596.506 because section 906 of TSRA no longer imposes licensing requirements on the export of agricultural commodities, medicine, or medical devices to Sudan.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 596

Administrative practice and procedure, Banks, Banking, Credit, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Terrorism.

For the reasons set forth in the preamble, OFAC amends 31 CFR part 596 as follows:

PART 596—TERRORISM LIST GOVERNMENTS SANCTIONS REGULATIONS

■ 1. The authority citation for part 596 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 596.505 [Amended]

■ 2. In § 596.505(a), remove ''or the Government of Sudan to Sudanese nationals''.

§ 596.506 [Removed and Reserved]

■ 3. Remove and reserve § 596.506.

Dated: May 14, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–10586 Filed 5–19–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Chapter II

[Docket Number: COE–2020–0002]

RIN 0710–AA84

Reissuance and Modification of Nationwide Permits; Correction

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule; correction.

SUMMARY: The U.S. Army Corps of Engineers published a document in the **Federal Register** of January 13, 2021, a final rule concerning the reissuance and modification of nationwide permits. This document contains a correction to the rule.

DATES: This correction is effective May 20, 2021, and is applicable beginning March 15, 2021.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO–R, 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by email at *david.b.olson@usace.army.mil,* or access the U.S. Army Corps of Engineers Regulatory Home Page at *https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 13, 2021, in FR Doc. 2021–00102, appearing on page 2744, the following correction is made:

1. On page 2863, third column, correct the third paragraph of NWP 52 to read as follows: ''The discharge must not cause the loss of greater than ½-acre of waters of the United States. The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the

United States is not a loss of waters of the United States for the purposes of applying the ½-acre limit.''

Approved:

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2021–10623 Filed 5–19–21; 8:45 am]

BILLING CODE 3720–52–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19–212; FCC 20–126; FRS 27277]

Completing the Transition to Electronic Filing, Licenses and Authorizations, and Correspondence in the Wireless Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) is correcting the amendatory instructions for the E-Licensing Report and Order that appeared in the **Federal Register** on December 29, 2020. The Report and Order finalizes the Commission's transition to electronic interactions for licenses in the Wireless Radio Services. We make this correction because an amendatory instruction in the rules can no longer be implemented as written. This is because the rule was modified after the Report and Order was adopted but before the rule modification was scheduled to take effect.

DATES: Effective June 29, 2021.

FOR FURTHER INFORMATION CONTACT: Katherine Patsas Nevitt email: *katherine.nevitt@fcc.gov* of the Wireless Telecommunications Bureau; or call Katherine Patsas Nevitt at (202) 418–0638.

SUPPLEMENTARY INFORMATION: In FR Doc. 20–28779, appearing on page 85524 in the **Federal Register** on December 29, 2020, the following correction is made:

§ 1.1307 [Corrected]

■ 1. On page 85530, in the second column, in amendatory instruction 20, remove instruction 20a and redesignate instructions 20b and 20c as instructions 20a and 20b.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–10670 Filed 5–19–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212 and 252

[Docket DARS–2019–0047]

RIN 0750–AJ52

Defense Federal Acquisition Regulation Supplement: Expediting Contract Closeout (DFARS Case 2017–D042)

AGENCY: Defense Acquisition Regulation System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit expedited contract closeout through a waiver by the contractor and the Government of entitlement to any residual dollar amounts that are due to either party at the time of contract closeout. The changes are necessary to establish an expedited contract closeout agreement that will save administrative costs for both the contractor and the Government.

DATES: Effective May 20, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 85 FR 19719 on April 8, 2020, to implement an expedited contract closeout process in the DFARS. The rule adds a new contract clause at DFARS 252.204–7022, Expediting Contract Closeout, and a prescription for the clause at DFARS 204.804–70. The clause will be used when the contracting officer intends to expedite the contract closeout process by having the contractor and the Government waive entitlement to a residual dollar amount up to $1,000 at the time of contract closeout. Four respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. One respondent provided a comment on the DoD budget that was outside the scope of this rule. A discussion of the remaining comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

Minor edits were made to the final rule to account for baseline updates necessitated by publication of other DFARS interim or final rules. Edits were made to the proposed rule to clarify the Government's intent regarding the determination of a residual amount.

B. Analysis of Public Comments

1. General Support for the Rule

Comment: Some respondents express support for the rule.

Response: DoD acknowledges support for the rule.

2. Application of the Rule

Comment: Some respondents support expanding the application of the expedited closeout process to other procurements, to include those issued under FAR parts 8, 15, and 16, and DoD-funded assisted acquisitions regardless of awarding agency.

Response: The rule does not exclude DoD contracts or orders issued against DoD contracts. DoD does not have the authority to impose the expedited contract closeout clause on non-DoD contracts or assisted acquisitions conducted by non-DoD agencies.

3. Clarification of the Process

Comment: Some respondents express concern about the bilateral agreement to waive the entitlement of up to $1,000 occurring in advance of contract closeout. A respondent recommends that the determination to invoke the clause and the expedited contract closeout process be mutually agreed by the Government and contractor at time of contract closeout.

Response: Use of the clause is not mandatory. The rule permits contracting officers to insert the clause in solicitations and resulting contracts, at their discretion, unless the successful offeror indicates they do not agree to the inclusion of the clause in the resulting contract. The agreement to waive the entitlement at the time of contract award permits the Government and contractor to complete the applicable closeout procedures at FAR 4.804, without having to execute a bilateral contract modification to invoke the clause or close the contract. The Government and contractor should reach a bilateral agreement during the normal closeout processes in FAR 4.804. The text of the final rule is revised to clarify that completion of the contract closeout procedures at FAR 4.804 is required.

Comment: Some respondents request clarification on how the residual amount will be determined.

Response: Contracting officers are still required to complete all of the applicable closeout requirements at FAR 4.804 when executing the expedited contract closeout procedures under this rule. The closeout requirements at FAR 4.804 should result in a determination of any residual dollar amounts owed to either party at the end of the contract.

4. Integrity and Public Trust

Comment: A respondent expresses concern that the proposed rule might negatively impact public trust because the waiver process may provide a mechanism for abuse by either contractors or the Government. Of specific concern is the potential for a contractor being permitted to provide less than the contract requires or, conversely, with the Government paying less than is legitimately owed under the contract price structure. The respondent expresses concern that public perception of the potential for abuse could outweigh the benefits of the intended cost efficiencies.

Response: FAR 4.804–5 directs contracting officers to initiate contract closeout after receiving evidence of physical completion, as defined in FAR 4.804–4.

5. Initial Regulatory Flexibility Analysis

Comment: A respondent questions whether the impact on small business was accurately reflected in the initial regulatory flexibility analysis and asserts that the numbers were not comprehensive enough to estimate the impact on small business.

Response: See section VI of this preamble for revised and expanded analysis of the impact on small business.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule creates a new clause at DFARS 252.204–7022, Expediting Contract Closeout. The objective of the rule is to establish an expedited contract closeout agreement and instructions that will save administrative costs for both the contractor and the Government. DoD plans to apply this clause to solicitations and contracts for acquisitions valued at or below the simplified acquisition threshold and to acquisitions of commercial items, including COTS items. These categories of acquisitions are those most likely to benefit from expedited contract closeout.

IV. Executive Order 12866 and 13563

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

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to permit expedited contract closeout through the waiver of entitlement by the contractor and the Government to any residual contract dollar amount of $1,000 or less at the time of contract closeout. The new DFARS clause will apply to solicitations and contracts, to include contracts valued at or below the simplified acquisition threshold and contracts for commercial items and commercially available off-the-shelf (COTS) items.

The objective of the rule is to avoid expending contractor and Government administrative resources in amounts greater than a residual contract dollar amount of $1,000 or less at the time of contract closeout.

One public comment questioned whether the impact on small business was accurately reflected in the initial regulatory flexibility analysis (IRFA) and asserted that the numbers were not comprehensive enough to estimate the impact on small business. The IRFA estimated the impact based only upon those contracts administered by the Defense Contract Management Agency; however, the data did not identify the number of contracts awarded to small entities. Since the initial assessment, DoD-wide data was obtained and a more comprehensive FRFA has been conducted. There were no changes made to the rule as a result of this comment and the expanded analysis.

The rule will likely affect a large number of small entities that have been or will be awarded contracts, including those under FAR part 12 procedures for the acquisition of commercial items, including COTS items. Data was obtained from the Electronic Data Access module of the Procurement Integrated Enterprise Environment for physically complete contracts that are eligible for closeout and have a residual contract balance that is less than $1,000 but more than $0. These actions were then compared to the Federal Procurement Data System to estimate the number of those contracts awarded to small entities; however, the data did not identify the number of unique small entities.

As of the end of fiscal year 2020, the data indicates that there were an estimated 20,884 DoD contracts with total residual contract amounts valued at approximately $1,844,101 that meet the criteria for application of the rule. Of those 20,884 contracts, it is estimated that 14,840 contracts with residual contract value of approximately $1,294,859 were awarded to small entities. The data further reflects that approximately 9,292 contracts had a remaining balance due to the contractor of $1,000 or less and 5,548 contracts indicated a credit due to the Government of $1,000 or less.

There are no known, significant, alternative approaches that would accomplish the objectives of the rule.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 US.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Amend section 204.804 by adding paragraph (4) to read as follows:

204.804 Closeout of contract files.

* * * * *

(4) When using the clause at 252.204–7022, Expediting Contract Closeout, to expedite contract closeout, determine the residual dollar amount upon completion of all applicable closeout requirements of FAR 4.804.

■ 3. Add section 204.804–70 to read as follows:

204.804–70 Contract clause.

Use the clause at 252.204–7022, Expediting Contract Closeout, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the contracting officer intends to expedite contract closeout through the mutual waiver of entitlement to a residual dollar amount of $1,000 or less determined at the time of contract closeout.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 212.301 by adding paragraph (f)(ii)(M) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ii) * * *

(M) Use the clause at 252.204–7022, Expediting Contract Closeout, as prescribed in 204.804–70.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 252.204–7022 to read as follows:

252.204–7022 Expediting Contract Closeout

As prescribed in 204.804–70, use the following clause:

Expediting Contract Closeout (MAY 2021)

(a) At the conclusion of all applicable closeout requirements of Federal Acquisition Regulation 4.804, the Government and Contractor shall mutually agree on the residual dollar amount remaining on the contract. Both the Government and Contractor agree to waive payment of any residual dollar amount of $1,000 or less to which either party may be entitled at the time of contract closeout.

(b) A residual dollar amount includes all money owed to either party at the end of the contract and as a result of the contract, excluding amounts connected in any way with taxation or a violation of law or regulation.

(c) For purposes of determining residual dollar amounts, offsets (*e.g.,* across multiple contracts or orders) may be considered only to the extent permitted by law.

(End of clause)

[FR Doc. 2021–10580 Filed 5–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 213, 215, 242, 252, and 253

[Docket DARS–2021–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective May 20, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6100.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. At DFARS 207.106, deletes a redundant paragragh that duplicates paragraph (S–70)(2)(ii).

2. Updates internet addresses at DFARS 213.301 paragraph (4), DFARS 242.202 paragraph (e)(1)(A), and DFARS 253.303.

3. Amends the table at DFARS 215.404–71–3, paragraph (c), to correct a typographical error in the term ''Cost-plus-incentive-fee'' in the ''Contract Type'' column; and removes unnecessary punctuation in the column titled ''Designated Range (percent)''.

4. In paragraph (e) of the clause at DFARS 252.204–7007, replaces references to the Online Representations and Certifications Application (ORCA) with references to the System for Award Management (SAM); deletes duplicate text; and makes other minor editorial changes.

5. Corrects a typographical error in the title of the provision at DFARS 252.204–7017, and capitalizes the heading for DFARS 252.235–7003.

List of Subjects in 48 CFR Parts 207, 213, 215, 242, 252, and 253

Government procurement.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 207, 213, 215, 242, 252, and 253 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 213, 215, 242, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 207—ACQUISITION PLANNING

207.106 [Amended]

■ 2. Amend section 207.106 by removing the duplicative paragraph (S–70)(2)(ii) following paragraph (S–70)(2)(v).

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Amend section 213.301 by revising paragraph (4) to read as follows:

213.301 Governmentwide commercial purchase card.

* * * * *

(4) Guidance on DoD purchase, travel, and fuel card programs is available in the ''Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs'' at *https://www.acq.osd.mil/dpap/pdi/pc/policy_documents.html.* Additional guidance on the fuel card programs is available at *https://www.dla.mil/Energy/Offers/Products/GovernmentFuel/.*

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Amend section 215.404–71–3 by revising the paragraph (c) table to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

(c) * * *

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5	4 to 6
Firm-fixed-price, with performance-based payments	(6)	4	2.5 to 5.5
Firm-fixed-price, with progress payments	(2)	3	2 to 4
Fixed-price incentive, no financing	(1)	3	2 to 4
Fixed-price incentive, with performance-based payments	(6)	2	0.5 to 3.5
Fixed-price with redetermination provision	(3)	.....	
Fixed-price incentive, with progress payments	(2)	1	0 to 2
Cost-plus-incentive-fee	(4)	1	0 to 2
Cost-plus-fixed-fee	(4)	0.5	0 to 1
Time-and-materials (including overhaul contracts priced on time-and-materials basis)	(5)	0.5	0 to 1
Labor-hour	(5)	0.5	0 to 1
Firm-fixed-price, level-of-effort	(5)	0.5	0 to 1

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 5. Amend section 242.202 by revising paragraph (e)(1)(A) to read as follows:

242.202 Assignment of contract administration.

* * * * *

(e)(1)(A) In special circumstances, a contract administration office may request support from a component not listed in the Federal Directory of Contract Administration Services Components (available via the internet at *https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml*).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 252.204–7007 by—

■ a. Removing the clause date ''(NOV 2020)'' and adding ''(MAY 2021)'' in its place; and

■ b. Revising paragraph (e).

The revision reads as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(e) The Offeror has completed the annual representations and certifications electronically via the SAM website at *https://www.acquisition.gov/*. After reviewing the SAM database information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204–8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*Offeror to insert changes, identifying change by provision number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS provision No.	Title	Date	Change

Any changes provided by the Offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications located in the SAM database.

* * * * *

■ 7. Amend section 252.204–7017 by revising the clause title and date to read as follows:

252.204–7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation.

* * * * *

Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation (May 2021)

* * * * *

■ 8. Revise the section heading for 252.235–7003 to read as follows:

252.235–7003 Frequency Authorization.

* * * * *

PART 253—FORMS

■ 9. Revise section 253.303 to read as follows:

253.303 Agency forms.

DoD forms are available at *https://www.esd.whs.mil/Directives/forms/*.

[FR Doc. 2021–10584 Filed 5–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 223

[Docket DARS–2020–0045]

RIN 0750–AL17

Defense Federal Acquisition Regulation Supplement: Authorities for Minimizing the Use of Materials Containing Hexavalent Chromium (DFARS Case 2020–D031)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to revoked Executive orders related to minimizing the use of materials containing hexavalent chromium.

DATES: Effective May 20, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove references to Executive Order (E.O.) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, and E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, as the authorities for the policy at DFARS subpart 223.73, Minimizing the Use of Materials Containing Hexavalent Chromium. Both E.O. 13423 and E.O. 13514 were revoked by E.O. 13693, Planning for Federal Sustainability in the Next Decade, which was later revoked by E.O. 13834, Efficient Federal Operations (83 FR 23771, May 22, 2018). E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 25, 2021), partially revoked E.O. 13834, resulting in no impact to this final rule.

The removal of these references will not impact DoD's policies and procedures for minimizing the use of hexavalent chromium, a known carcinogen, still used in some DoD weapon systems and platforms due to its corrosion protection properties.

DoD published a proposed rule in the **Federal Register** at 85 FR 74639 on November 23, 2020.

One respondent submitted a comment about a grant, which is out of the scope of this rule. No changes were made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This final rule does not create any new solicitation provisions or contract clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the simplified acquisition threshold, or for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

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

IV. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

DoD has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule amends the DFARS to remove references to Executive Order (E.O.) 13423, Strengthening Federal Environmental, Energy, and Transportation Management; and E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, which were revoked by E.O. 13693, Planning for Federal Sustainability in the Next Decade. E.O. 13693 was later revoked by E.O. 13834, Efficient Federal Operations (83 FR 23771, May 22, 2018). E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 25, 2021), partially revoked E.O. 13834 resulting in no impact to this final rule. The objective of the case is to remove two revoked E.O.s while maintaining current DoD policies and procedures for minimizing the use of materials containing hexavalent chromium.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule is not expected to affect significant numbers of small business concerns because the requirements and contract clause remain unchanged. This rule will maintain the status quo. Data generated from the Electronic Data Access System for fiscal years 2017 through 2019, indicates that DoD has awarded an average of 70,470 contracts containing DFARS clause 252.223–7008, Prohibition of Hexavalent Chromium, to approximately 10,868 unique small entities during the three year period. It is assumed that there will be some impact to unique small entities that are new to DoD contracting, however, the impact will most likely be negligible because national and international restrictions have been in place for several years.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

There are no practical alternatives that will accomplish the objective of this rule.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 223

Government procurement.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR 223 is amended as follows:

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 1. The authority citation for 48 CFR part 223 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 223.7301 to read as follows:

223.7301 Policy.

In accordance with the DoD policy memorandum of April 8, 2009, Minimizing the Use of Hexavalent Chromium, it is DoD policy to minimize hexavalent chromium (an anti-corrosive) in items acquired by DoD (deliverables and construction material), due to the serious human health and environmental risks related to its use.

223.7302 [Removed and Reserved]

■ 3. Remove and reserve section 223.7302.

[FR Doc. 2021–10583 Filed 5–19–21; 8:45 am]

BILLING CODE 5001–06–P

Proposed Rules

Federal Register
Vol. 86, No. 96
Thursday, May 20, 2021

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 ENERGY

10 CFR Part 430

[EERE–2017–BT–TP–0028]

RIN 1904–AE03

Energy Conservation Program: Test Procedures for Water Closets and Urinals

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedures for water closets and urinals, to reference the most recent update to the relevant industry standard, American Society of Mechanical Engineers (''ASME'') Standard 112.19.2–2018. DOE also proposes to replace the term ''blowout toilet'' with ''blowout bowl water closet,'' and add definitions for the terms ''blowout action,'' ''gravity flush tank water closet,'' ''siphonic action,'' ''siphonic bowl,'' and ''trough-type urinal,'' which are currently used in the Federal test procedures but not defined. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than July 19, 2021. See section V, ''Public Participation,'' for details. DOE will hold a webinar on June 16, 2021, from 10:00 a.m. to 3:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, it will be cancelled.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–TP–0028, by email to the following address: *PlumbingProducts2017TP0028@ee.doe.gov.* Include the docket number EERE–2017–BT–TP–0028 or regulatory information number (RIN) 1904–AE03 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0028.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, GC–33, Washington, DC 20585; (202) 586–2555; *Matthew.Ring@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following industry standard into part 430: ASME A112.19.2–2018/CSA B45.1–18, ''Ceramic plumbing fixtures,'' approved 2018 (''ASME A112.19.2–2018'').

Copies of ASME A112.19.2–2018 can be obtained from American Society of Mechanical Engineers at Two Park Avenue, New York, NY 10016–5990, or by going to *www.asme.org.*

For a further discussion of this standard, see section IV.M.

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I. Authority and Background

Water closets and urinals are included in the list of ''covered products'' for which DOE is authorized to establish and amend water use standards and test procedures. (42 U.S.C. 6292(a)(17) and (18)) DOE's test procedures for water closets and urinals are prescribed in the CFR at 10 CFR 430.23(u) and (v), respectively, and 10 CFR part 430 subpart B appendix T (''Appendix T''). The following sections discuss DOE's authority to establish test procedures for water closets and urinals, as well as relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency or water use of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency and water use. These products include water closets and urinals, the subject of this document. (42 U.S.C. 6292(a)(17) and (18))

The energy conservation program under EPCA, which includes water use requirements, consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards [3] (42 U.S.C. 6295), and the authority to require information and reports from manufacturers. (42 U.S.C. 6296)

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the energy and water use, as applicable, of those consumer products. (42 U.S.C. 6293(c)) Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency and water use requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy and water conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be (1) reasonably designed to produce test results which measure energy efficiency, energy use, water use (for plumbing products such as water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use and (2) not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA directs that the test procedures for water closets and urinals are to be the test procedures specified in American Society of Mechanical Engineers A112.19.6–1990, ''Hydraulic Requirements for Water Closets and Urinals'' (''ASME A112.19.6–1990''). (42 U.S.C. 6293(b)(8)(A)) EPCA further directs that, if the requirements of ASME A112.19.6–1990 are revised at any time and approved by the American National Standards Institute (''ANSI''), DOE must amend the Federal test procedures to conform to the revised ASME/ANSI standard, unless DOE determines by rule that to do so would not meet the requirements of EPCA that the test procedures be reasonably designed to produce test results which measure water use during a representative average use cycle as determined by DOE, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(8)(B)) If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including water closets and urinals, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to be reasonably designed to produce test results that reflect water use and estimated operating costs during a representative average use cycle or period of use, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A)). If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days.[4] *Id.* In

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

[3] The term ''energy conservation standard'' includes water use standards for showerheads, faucets, water closets and urinals. (42 U.S.C. 6291(6)(A))

[4] DOE has historically provided a 75-day comment period for test procedure NOPRs, consistent with the comment period requirement for technical regulations in the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, Congress repealed the NAFTA Implementation Act and has replaced NAFTA with the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11, thereby rendering E.O. 12889 inoperable. Consequently, since the USMCA is consistent with EPCA's public comment period requirements and normally requires only a minimum comment period of 60 days for technical

prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy or water use or energy efficiency of the type (or class) of covered products involved. *Id.* If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of these requirements under EPCA. (42 U.S.C. 6293(b)(1)(A) and (b)(8)(B))

B. Background

DOE's current test procedures for water closets and urinals are found in 10 CFR 430.23(u) and (v), respectively, and Appendix T.

DOE last amended the test procedures for water closets and urinals on October 23, 2013, (''October 2013 final rule''). 78 FR 62970. In the October 2013 final rule, DOE incorporated by reference ASME A112.19.2–2008, ''Ceramic Plumbing Fixtures,'' including Update No. 1, dated August 2009, and Update No. 2, dated March 2011 (''ASME A112.19.2– 2008''). ASME A112.19.2–2008 is a consolidation and revision of several ASME test methods, including a revised version of the test method previously incorporated by reference, ASME A112.19.6–1995, and, for purposes of testing water closets and urinals, is the successor standard to the ASME A112.19.6–1990 standard required by EPCA. (42 U.S.C. 6293(b)(8)(A))

In July 2013, ASME revised ASME A112.19.2–2008 by issuing ASME A112.19.2–2013, ''Ceramic Plumbing Fixtures'' (''ASME A112.19.2–2013''). In October 2013, ASME published Update 1 for ASME A112.19.2–2013 (''ASME A112.19.2–2013 Update 1''). Because of the timing of the issuance of ASME A112.19.2–2013 in July 2013, and ASME A112.19.2–2013 Update 1 in October 2013, DOE did not incorporate either 2013 version of the industry standard in the October 2013 final rule. 78 FR 62970, 62977.

In July 2018, ASME revised ASME A112.19.2–2013 by publishing ASME A112.19.2–2018, followed by the addition of an errata sheet in October 2018 (''ASME A112.19.2–2018'' refers to both the original document and the October 2018 errata sheet). ASME A112.19.2–2018 does not contain any substantive differences compared to ASME A112.19.2–2013 regarding the test apparatus and instructions for testing water closets and urinals, and the test method for water consumption (see section III.B for further discussion).

On August 5, 2019, DOE published a request for information (''August 2019 RFI'') pertaining to the test procedures for water closets and urinals. 84 FR 37970. In the August 2019 RFI, DOE solicited public comments, data, and information on all aspects of, and any issues or problems with, the existing DOE test procedures for water closets and urinals, including on any needed updates or revisions. Specifically, DOE requested comment on whether to conform the test procedures to ASME A112.19.2–2018, including updates to terms and definitions, figures, and tables. *Id.* DOE received four comments in response to the August 2019 RFI from the interested parties listed in Table I.1.[5]

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO AUGUST 2019 RFI

Commenter	Reference in this NOPR	Categorization
California Investor Owned Utilities	CA IOUs	Utility Companies.
Cooper Reaves	Reaves	Member of the Public.
Natural Resources Defense Council, Appliance Standards Awareness Project.	NRDC and ASAP	Efficiency Advocacy Organizations.
Plumbing Manufacturers International	PMI	Trade Association.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update 10 CFR 430.2 (Definitions), 10 CFR 430.3 (Materials Incorporated by Reference), and Appendix T as follows:

(1) Incorporate by reference ASME A112.19.2–2018, ''Ceramic plumbing fixtures;''

(2) Replace the current term ''blowout toilet'' with ''blowout bowl water closet;'' and

(3) Add terms and corresponding definitions for ''blowout action,'' ''gravity flush tank water closet,'' ''siphonic action,'' ''siphonic bowl,'' and ''trough-type urinal.''

DOE's proposed actions are summarized in Table II–1, which provides a comparison of each proposed change to the current test procedures, as well as the rationale for the proposed change.

TABLE II–1—SUMMARY OF PROPOSED CHANGES TO THE TEST PROCEDURES RELATIVE TO THE CURRENT TEST PROCEDURES

Current DOE test procedures	Proposed test procedures	Attribution
Incorporates the 2008 version of ASME A112.19.2 for measurement of water consumption.	Incorporates the 2018 version of ASME A112.19.2	Industry TP update to ASME A112.19.2–2018.
References and defines the term ''blowout toilet.''	Defines the term ''blowout bowl,'' and references the term ''blowout bowl water closet'' in lieu of ''blowout toilet''. Defines the term ''blowout action,'' which is included within the proposed definition of ''blowout bowl.''	Clarifies and harmonizes terms and definitions with ASME A112.19.2–2018.

regulations, DOE now provides a 60-day public comment period for test procedure NOPRs.

[5] Comments provided in the docket are available at *https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0028.*

TABLE II–1—SUMMARY OF PROPOSED CHANGES TO THE TEST PROCEDURES RELATIVE TO THE CURRENT TEST PROCEDURES—Continued

Current DOE test procedures	Proposed test procedures	Attribution
References the terms ''gravity flush tank water closet'' and ''siphonic bowl,'' but does not define either term.	Defines the terms ''gravity flush tank water closet'' and ''siphonic bowl.'' Defines the term ''siphonic action,'' which is included within the proposed definition of ''siphonic bowl.''	Clarifies and harmonizes definitions with ASME A112.19.2–2018.
References the term ''trough-type urinal,'' but does not define it.	Defines the term ''trough-type urinal''	Harmonizes the definition of the term with stakeholder recognized definition.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured water use of water closets and urinals, which is representative of average use cycles, and that the proposed test procedures would not be unduly burdensome to conduct. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

A. Scope of Applicability

This NOPR applies to both water closets and urinals, as defined in 10 CFR 430.2. DOE defines a ''water closet'' as a plumbing fixture that has a water-containing receptor that receives liquid and solid body waste, and upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons. 10 CFR 430.2. DOE defines a ''urinal'' as a plumbing fixture that receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installations in prisons. *Id.*

The proposed updates in this NOPR would not change the scope of the test procedures for water closets or urinals.

B. Updates to Industry Standards

Currently, DOE's test procedures for water closets and urinals in Appendix T incorporate by reference ASME A112.19.2–2008,[6] sections 7.1, 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.1.5, 7.4, 8.2, 8.2.1, 8.2.2, 8.2.3, 8.6, Table 5, and Table 6. These sections and tables provide procedures for testing and measuring water consumption, specifications for test apparatus, and other general requirements for the testing of water closets and urinals.

ASME A112.19.2–2018, the current version of the standard, amends pertinent sections of the 2008 version currently incorporated into 10 CFR part 430. These amendments include (1) editorial changes and clarification in sections 7.1.2, 7.3.2,[7] 8.6.4, and Figure 12;[8] (2) a correction in section 8.2.1 to the water consumption static test pressure value for urinals to reflect the corresponding value in Table 6; and (3) additions to Table 5 that do not appear to be relevant to the water consumption test for water closets. In the August 2019 RFI, DOE had tentatively determined that these amendments would not impact (1) the measured values of water use for water closets and urinals under Appendix T, (2) the representativeness of the results, or (3) the test burden, and requested comment on this tentative determination. 84 FR 37970, 37973.

In response to the August 2019 RFI, PMI generally agreed with DOE's evaluation of ASME A112.19.2–2018, as compared to the currently referenced version. (PMI, No. 3 at p. 1)[9] The CA IOUs generally supported updating the referenced ASME A112.19.2 standard to the 2013 version, which they stated is the most recent version formally approved and accepted, to capture substantive updates. (CA IOUs, No. 4 at p. 2). The CA IOUs also recommended that DOE include ''less substantive'' updates from the 2018 edition, including definitions, editorial changes, and corrections. *Id.* Specifically, the CA IOUs suggested that DOE make the correction in section 8.2.1 of ASME A112.19.2–2018 to the water consumption static pressure value for urinals in DOE's regulations to reflect the corresponding value in Table 6. (CA IOUs, No. 4 at p. 4) Other stakeholders did not comment directly on DOE's evaluation of the 2013 and 2018 versions of ASME A112.19.2.

DOE reiterates its tentative determination from the August 2019 RFI that the amendments in ASME A112.19.2–2018 would not impact (1) the measured values of water use for water closets and urinals under Appendix T, (2) the representativeness of the results, or (3) the test burden. As stated previously, ASME A112.19.2–2018 is the most recent version of the industry standard, and DOE understands the 2018 version to have been approved by ANSI on June 15, 2018.[10] The CA IOUs stated that the 2013 version of ASME A112.19.2 contains substantive updates to the 2008 version, currently referenced in DOE's test procedures. If DOE adopts the 2018 version as proposed, DOE's regulations would reflect the substantive updates of interest to the CA IOUs. For the reasons described in the August 2019 RFI and reiterated previously, DOE is proposing to incorporate by reference ASME A112.19.2–2018.

DOE requests comment on its proposal to incorporate by reference ASME A112.19.2–2018.

DOE also proposes to remove references in Appendix T to the industry standard that are superfluous. Specifically, Appendix T references section 7.1 in addition to subsections 7.1.1, 7.1.2, 7.1.3, 7.1.4 and 7.1.5 of ASME A112.19.2–2008.[11] Section 7.1 only provides the title ''General,'' without any other content. The referenced subsections 7.1.1, 7.1.2, 7.1.3, 7.1.4 and 7.1.5 provide the general specifications needed for performing the test procedure. Therefore, DOE proposes to exclude the reference to section 7.1 of ASME A112.19.2–2018 in Appendix T. Similarly, section 8.2 only provides the title ''Test apparatus and general

[6] This reference includes Update No. 1, dated August 2009, and Update No. 2, dated March 2011.

[7] The water consumption test is section 7.4 in ASME A112.19.2–2008, but section 7.3 in ASME A112.19.2–2018.

[8] While Figure 12 is not incorporated by reference in 10 CFR 430.3(h)(2), Figure 12 is referenced within section 7.1.1, which is currently incorporated by reference.

[9] A notation in the form ''PMI, No. 3 at p. 1'' identifies a written comment: (1) Made by PMI; (2) recorded in document number 3 that is filed in the docket of this test procedure rulemaking (Docket No. EERE–2017–BT–TP–0028) and available for review at *www.regulations.gov;* and (3) which appears on page 1 of document number 3.

[10] ANSI approval of A112.19.2–2018 indicated in ASME A112 Standards Status Report, available at *https://cstools.asme.org/csconnect/Filedownload.cfm?43452.5508681&dir=CommitteeFiles&thisfile=487.pdf.*

[11] The 2018 industry standard update made no changes to these sections.

instructions,'' whereas sections 8.2.1, 8.2.2, and 8.2.3 provide the test apparatus and instructions needed for performing the test procedure. Therefore, DOE also proposes to exclude the reference to section 8.2 of ASME A112.19.2–2018 in Appendix T.

DOE requests comment on its proposal to remove references to section 7.1 and 8.2 of ASME A112.19.2–2018 in Appendix T.

C. Definitions

Several terms and definitions in ASME A112.19.2–2018 related to water closets and urinals vary from those in DOE regulations, including terms not defined in 10 CFR 430.2. Table III–1 provides a summary of the terms and definitions discussed in this NOPR.

TABLE III–1—WATER CLOSETS AND URINALS: TERMS AND DEFINITIONS

Term	Usage in Appendix T, 10 CFR 430.32(q) or 10 CFR 430.32(r)	DOE definition (10 CFR 430.2)	ASME definition (A112.19.2–2018)	DOE's proposal
Toilet	10 CFR 430.32(q)	None	None	Replace term with ''water closet.''.
Electromechanical hydraulic toilet.	10 CFR 430.32(q)	A water closet that utilizes electrically operated devices such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet.	None	Replace term with ''electromechanical hydraulic water closet'' while maintaining existing definition.
Electro-hydraulic water closet.	Not used	None	A water closet with a nonmechanical trap seal incorporating an electric motor and controller to facilitate flushing.	No update.
Blowout toilet	10 CFR 430.32(q)	A water closet that uses a non-siphonic bowl with an integral flushing rim, a trap at the rear of the bowl, and a visible or concealed jet that operates with a blowout action.	None	Replace term with ''blowout bowl water closet.''.
Blowout bowl	Appendix T	None	A non-siphonic water closet bowl with an integral flushing rim, a trap at the rear of the bowl, and a visible or concealed jet that operates with a blowout action.	Adopt ASME A112.19.2–2018 definition.
Blowout action	Not used	None	A means of flushing a water closet whereby a jet of water directed at the bowl outlet opening pushes the bowl contents into the upleg, over the weir, and into the gravity drainage system.	Adopt ASME A112.19.2–2018 definition.
Blowout water closet.	Appendix T	None	None	Replace term with ''blowout bowl water closet.''.
Gravity flush tank water closet.	Appendix T	None	A water closet designed to flush the bowl with water supplied by gravity only.	Adopt ASME A112.19.2–2018 definition.
Siphonic bowl	Appendix T	None	A water closet bowl that has an integral flushing rim, a trap at the front or rear, and a floor or wall outlet, and operated with a siphonic action (with or without a jet).	Adopt ASME A112.19.2–2018 definition.
Siphonic action	Not used	None	The movement of water through a flushing fixture by creating a siphon to remove waste material.	Adopt ASME A112.19.2–2018 definition.
Trough-type urinal	10 CFR 430.32(r)	None	None	Adopt California's regulatory definition.

These terms and definitions are discussed in greater detail in the following paragraphs.

1. Toilet Versus Water Closet

Although EPCA and DOE's test procedure use the term ''water closet,'' several terms in 10 CFR 430.32(q) reference the term ''toilet'' instead, which is not defined. See 42 U.S.C. 6292(a)(17) DOE defines ''water closet'' at 10 CFR 430.2. DOE understands the terms ''toilet'' and ''water closet'' as interchangeable. As such, and consistent with the nomenclature in EPCA and DOE's product definitions, DOE proposes in this NOPR to replace all instances of the term ''toilet'' in 10 CFR 430.32(q) with ''water closet''. Specifically, this proposal includes replacing ''toilet'' with ''water closet'' in the following terms: Gravity tank-type toilet, flushometer tank toilet, electromechanical hydraulic toilet and blowout toilet. DOE is also proposing

other updates to many of these terms, as discussed in the following sections.

DOE requests comment on the proposal to replace the term ''toilet'' with ''water closet'' in 10 CFR 430.32(q).

2. Electromechanical Hydraulic Toilet Versus Electro-Hydraulic Water Closet

DOE regulations at 10 CFR 430.32(q) use the statutory term ''electromechanical hydraulic toilet'' (42 U.S.C. 6295(k)(1)(A)) as the name of a product class subject to water standards. DOE defines ''electromechanical hydraulic toilet'' as a water closet that utilizes electrically operated devices such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet. 10 CFR 430.2. ASME A112.19.2–2018, however, uses the term ''electro-hydraulic water closet,'' defined as a water closet with a non-mechanical trap seal incorporating an electric motor and controller to facilitate flushing. Both definitions include an electric motor as a mechanism to remove waste. However, in the August 2019 RFI, DOE tentatively concluded that the scope of the term ''electromechanical hydraulic toilet'' is broader because it also includes other electrically operated devices. 84 FR 37972.

In the August 2019 RFI, DOE requested comment on whether the terms ''electromechanical hydraulic toilet'' and ''electro-hydraulic water closet'' are understood to include the same products, and any potential impact, including to testing burden, of adopting the term ''electro-hydraulic water closet'' and the corresponding definition in ASME A112.19.2–2018, as compared to maintaining the current DOE term ''electromechanical hydraulic toilet'' and its definition in 10 CFR 430.2. In response to the August 2019 RFI, PMI recommended that DOE adopt the term ''electro-hydraulic water closet'' as defined in the latest industry standard and to remove its current term ''electromechanical water closet.'' (PMI, No. 3 at p. 2) PMI stated that the terms ''electro-hydraulic water closet'' and ''electromechanical hydraulic toilet'' are understood throughout the industry to include the same products. *Id.* The CA IOUs recommended keeping the current term and definition and stated that the ASME definition for ''electro-hydraulic water closet'' is narrower in scope than the current DOE definition for ''electromechanical water closet.'' (CA IOUs, No. 4 at p. 3)

DOE continues to view the current regulatory term ''electromechanical hydraulic toilet'' as broader in scope than ASME's ''electro-hydraulic water closet'' because it includes water closets that use electrically operated devices in addition to electric motors (*e.g.,* air compressors, pumps, solenoids, motors or macerators). In this NOPR, DOE is not proposing to change the scope of the water closet test procedure. As such, DOE is not proposing to amend the definition of ''electromechanical hydraulic toilet'' at 10 CFR 430.2 other than by replacing the term ''toilet'' with ''water closet,'' as discussed in section III.C.1 of this document.

DOE requests comment on the proposal to replace the term ''electromechanical hydraulic toilet'' with ''electromechanical hydraulic water closet,'' while retaining the existing regulatory definition of ''electromechanical hydraulic toilet.''

3. Blowout Toilet Versus Blowout Bowl

DOE regulations use the statutory term ''blowout toilet'' (42 U.S.C. 6295(k)(1)(A)) as the name of a product class subject to water standards at 10 CFR 430.32(q). DOE defines this term at 10 CFR 430.2. DOE also uses the undefined terms ''blowout bowl'' and ''blowout water closets'' in section 3.a.ii of Appendix T. ASME A112.19.2–2018, on the contrary, defines the term ''blowout bowl'' and does not define the term ''blowout toilet.'' Although DOE's definition of ''blowout toilet'' and ASME's definition of ''blowout bowl'' are not identical, they are similar, as illustrated in Table III–1. DOE's definition of ''blowout toilet'' refers to the entire product, using the phrase ''water closet that uses a non-siphonic bowl,'' whereas ASME's definition of ''blowout bowl'' refers specifically to the bowl portion of the product, using the phrase ''a non-siphonic water closet bowl.'' Within ASME A112.19.2–2018, the term ''blowout bowl'' is used in some instances to refer specifically to the type of bowl (*e.g.,* in contrast to a ''siphonic bowl'' or ''washdown bowl''), and in other instances to refer to the entire water closet (*e.g.* in contrast to a ''flushometer valve water closet'').

In the August 2019 RFI, DOE tentatively concluded that the terms ''blowout toilet'' and ''blowout bowl'' are synonymous and requested comment on this conclusion. 84 FR 37970, 37972. DOE also requested comment about any potential impact, including to testing burden, of adopting the term ''blowout bowl'' and the corresponding definition in ASME A112.19.2–2018, as compared to maintaining the current DOE term ''blowout toilet'' and its definition in 10 CFR 430.2. In response to the August 2019 RFI, PMI and the CA IOUs both agreed with DOE's preliminary conclusions and suggested that DOE should update the term ''blowout toilet'' to ''blowout bowl'' and define it per the latest ASME standard. (PMI, No. 3 at p. 2; CA IOUs, No. 4 at p. 3).

As discussed previously, in this NOPR DOE further clarifies that ''blowout toilet'' refers to the entire water closet, whereas ASME's definition of ''blowout bowl'' refers specifically to the bowl portion of the product only. Therefore, DOE is not proposing to update the defined term ''blowout toilet'' in 10 CFR 430.2 with ''blowout bowl''; rather, DOE is proposing to replace every instance of ''blowout toilet'' with ''blowout bowl water closet'' and to use the definition for ''blowout bowl'' provided in ASME A112.19.2–2018 (''water closet'' is already defined in 10 CFR 430.2) to harmonize its regulations with the industry accepted definition. In addition, DOE proposes to replace all instances of ''blowout water closet'' in Appendix T and 10 CFR 430.32(q) with ''blowout bowl water closets'' to be consistent with the proposed updates.

DOE requests comment on the proposal to replace all instances of ''blowout toilet'' and ''blowout water closet'' in Appendix T and 10 CFR 430.32(q) with ''blowout bowl water closets.''

In addition, the proposed definition from ASME A112.19.2–2018 for ''blowout bowl'' includes the term ''blowout action,'' which is also defined in ASME A112.19.2–2018. ASME A112.19.2–2018 defines blowout action as ''a means of flushing a water closet whereby a jet of water directed at the bowl outlet opening pushes the bowl contents into the upleg, over the weir, and into the gravity drainage system''. To ensure a consistent understanding of the term ''blowout action'' DOE also proposes to define in the Federal test procedure the term ''blowout action'' as it is defined in ASME A112.19.2–2018.

DOE requests comment on the proposal to adopt the term ''blowout action'' and its corresponding definition from ASME A112.19.2–2018.

4. Gravity Flush Tank Water Closet

Appendix T uses the term ''gravity flush tank water closet,'' which is not defined in 10 CFR 430.2. However, ASME A112.19.2–2018 defines this term, as shown in Table III–1of this NOPR. In the August 2019 RFI, DOE requested comment on whether this definition is consistent with how industry has understood and applied the term under DOE regulations, and whether there would be any potential impact to testing burden in adopting the

definition to this term. 84 FR 37970 at 37972.

In response to the August 2019 RFI, PMI and the CA IOUs both agreed that the definition from ASME A112.19.2–2018 is consistent with how the industry understands and applies the term, and therefore DOE should adopt the definition. (PMI, No. 3 at p. 2; CA IOUs, No. 4 at pp. 3–4) In addition, amongst all responses to the August 2019 RFI, no stakeholders commented on the potential test burden of adopting the term as defined in ASME A112.19.2–2018. Therefore, because the industry already applies the definition from ASME A112.19.2–2018, DOE is proposing in this NOPR to adopt the same definition, and add it to 10 CFR 430.2. Furthermore, DOE proposes to replace ''gravity tank-type toilets'' with ''gravity flush tank water closets'' in 10 CFR 430.32(q).

DOE requests comment on its proposal to adopt the definitions from ASME A112.19.2–2018 for the term ''gravity flush tank water closet''.

DOE requests comment on the proposal to replace the term ''gravity tank-type toilets'' with ''gravity flush tank water closets'' in its regulations.

5. Siphonic Bowl and Siphonic Action

Similar to ''gravity flush tank water closet,'' the term ''siphonic bowl'' is also not defined in 10 CFR 430.2, but is defined in ASME A112.19.2–2018. PMI and the CA IOUs commented that the definition from ASME A112.19.2–2018 is consistent with how the industry understands and applies the terms, and therefore DOE should adopt these definitions. (PMI, No. 3 at p. 2; CA IOUs, No. 4 at pp. 3–4) Because the industry already applies the definition from ASME A112.19.2–2018, DOE is proposing in this NOPR to adopt the same definition, and add it to 10 CFR 430.2. Furthermore, DOE proposes to replace ''siphonic water closets'' with ''siphonic bowl water closets'' in Appendix T to be consistent with the proposed updates.

DOE requests comment on its proposal to adopt the definition from ASME A112.19.2–2018 for the term ''siphonic bowl.''

DOE requests comment on the proposal to replace the term ''siphonic water closets'' with ''siphonic bowl water closets'' in its regulations.

In addition, the proposed definition from ASME A112.19.2–2018 for ''siphonic bowl'' includes the term ''siphonic action,'' which is also defined in ASME A112.19.2–2018. ASME A112.19.2–2018 defines siphonic action as ''the movement of water through a flushing fixture by creating a siphon to remove waste material.'' To keep consistent with the industry standard and to clarify the same term for the water closet test procedure, DOE also proposes to adopt the term ''siphonic action'' and its corresponding definition in ASME A112.19.2–2018.

DOE requests comment on the proposal to adopt the term ''siphonic action'' and its corresponding definition from ASME A112.19.2–2018.

6. Trough-Type Urinals

DOE prescribes maximum water use standards for ''trough-type'' urinals at 10 CFR 430.32(r); however, the term ''trough-type'' is not defined. ASME A112.19.2–2018 likewise does not define the term ''trough-type'' as it applies to urinals. In the August 2019 RFI, DOE requested comment on how to define the term ''trough-type urinal,'' and whether there is an industry definition for this term. 84 FR 37972.

In response, the CA IOUs suggested defining trough-type urinal as ''a urinal designed for simultaneous use by two or more persons.'' (CA IOUs, No. 4 at p. 4). The CA IOUs stated that this definition provided in a July 2013 publication from the CA IOUs titled ''Codes and Standards Enhancement (''CASE'') Report,'' [12] which addresses water efficiency opportunities for water closets and urinals through development of new and updated California Appliance Efficiency Regulations.

The definition suggested by the CA IOUs is the same as the definition for ''trough-type'' urinal found in section 1602(i) of the California Title 20 Appliance Efficiency Regulations and provides that a trough-type urinal is a ''a urinal designed for simultaneous use by two or more people.'' [13] PMI stated that it had no comment on defining ''trough-type'' urinal, stating that none of its members manufactured this product. (PMI, No. 3 at p. 2) DOE did not receive any other comments regarding the appropriate definition for trough-type urinals.

DOE tentatively concludes that industry is familiar with the definition of ''trough-type'' in the California regulations, and that the definition accurately describes the products at issue. Accordingly, DOE is proposing to use the definition found in California's regulations ''trough-type'' urinals.

DOE requests comment on the proposal to define the term ''trough-type urinal'' as ''a urinal designed for simultaneous use by two or more people.'' DOE specifically requests comment on whether the proposed definition would include products not currently understood to be trough-type urinals, or whether it would exclude products currently understood to be trough-type urinals. In addition, DOE requests comments on whether any physical characteristics or features differentiate trough-type urinals from other urinals.

D. Metric

Appendix T requires that the water consumption of water closets and urinals be determined using the flush volume in gallons per flush (''gpf'') or liters per flush (''Lpf'').

The CA IOUs commented that, in addition to water consumption, DOE should strongly consider flush performance. (CA IOUs, No. 4 at pp. 2–3) Specifically, they stated the water savings from toilets with low gpf rating would not be realized if more than one flush were required to effectively eliminate solid waste; therefore, as toilets become more efficient, it is important to maintain flush performance utility. *Id.* While ASME A112.19.2–2018 includes tests to evaluate the performance of the toilet (*i.e.,* how effectively it eliminates waste), the CA IOUs commented that industry stakeholders have expressed concern that these performance tests are not sufficient. *Id.* The CA IOUs also noted that there are voluntary test procedures to confirm flush performance, as determined through research for the CA IOU CASE Report, and that ''Maximum Performance (''MaP'') Testing: Toilet Fixture Performance Testing Protocol: Version 5—March 2013'' (''MaP Testing'') is the most popular performance testing method in the industry. *Id.* The CA IOUs commented that MaP Testing classifies how well a toilet moves waste, and is widely accepted by toilet stakeholders including manufacturers, water utilities and standard-setting entities. *Id.* The CA IOUs recommended that DOE consider evaluating the appropriateness of these flush performance metrics for evaluating performance in these plumbing applications. *Id.* at p. 3.

EPCA requires that any test procedures prescribed or amended be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative

[12] California Code of Regulations—Title 20. Public Utilities and Energy. Docket 12–AAER–2C; Analysis of Standards Proposal for Toilets and Urinals Water Efficiency. 2013.

[13] The California regulations are available at *https://ww2.energy.ca.gov/2019publications/CEC-140-2019-002/CEC-140-2019-002.pdf.*

average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Accordingly, DOE's test procedure for water closets is designed to measure water use. Any quality- or performance-based measures, such as the ability of a water closet to eliminate solid waste, are outside the scope of EPCA's requirements for DOE test procedure.

Outside the context of a test procedure rulemaking, EPCA does direct DOE to consider potential impacts to product utility, specifically when evaluating new and amended standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) In evaluating design options and the impact of potential standard levels in the context of an energy conservation standard rulemaking, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. *Id.* However, this analysis is beyond the scope of this NOPR.

E. Averaging Water Consumption Across Various Test Pressures

Appendix T requires water closets and urinals to be tested at various test pressures, as specified in Table III–2. Appendix T also requires that a test be performed three times at each required pressure. The final measured flush volume for each tested unit is the average of the total flush volumes recorded at all test pressures.

TABLE III–2—REQUIRED TEST PRESSURES IN APPENDIX T

Product configuration	Test pressures (pounds per square inch ("psi"))
Flushometer valve water closets with siphonic bowl	35, 80
Flushometer valve water closets with a blowout bowl	45, 80
Tank-type water closets	20, 50, 80
Urinals	25, 80

NRDC and ASAP commented that the averaging of results from the specified test pressures to determine the water consumption of a water closet or urinal is not representative of product performance in the real world. (NRDC and ASAP, No. 5 at p. 3) These commenters stated that while water pressure may vary substantially across a utility service area, the water pressure at which a single water closet operates would have an expected variation in the 5 to 10 psi range. *Id.* NRDC and ASAP stated that averaging under the DOE test procedure produces a composite result similar to that obtained at a mid-range test pressure. Additionally, citing an analysis of water pressure data from California, they stated the actual system pressures are more likely to be closer to the higher end of the pressure range rather than the lower end. *Id.* Accordingly, NRDC and ASAP recommended that, for both water closets and urinals, DOE require that the average of flush volumes at each test pressure not exceed the maximum flow rate requirement, rather than the average flush volume across all test pressures, and that the reported value be the highest of the averages. (NRDC and ASAP, No. 5 at pp. 3–4) NRDC and ASAP asserted that these recommended changes simply represent a revision to the calculation of reported test data and would not require additional testing or test apparatus, and thus would not increase the testing burden on manufacturers. *Id.*

As stated, EPCA requires that the test procedures for water closets and urinals be reasonably designed to produce test results which reflect water use during a representative average use cycle. (42 U.S.C. 6293(b)(3)) Water pressure can vary based on the site of installation of a water closet or urinal. Reflecting a range of water pressures in the calculated and reported flush volume provides an average representation. A flush volume reflecting a single water pressure would be less representative of the flush volumes of water closets and urinals installed at locations that do not experience that same water pressure.

Moreover, the analysis cited by NRDC and ASAP regarding water pressures experienced across water systems is specific to California and, as such, may not be representative nationally. In a separate proceeding involving clothes washers, the California Energy Commission (''CEC'') presented several differences in California's water systems relative to the rest of the nation.[14] Specifically, CEC noted that ''California's water supply situation is unique in scope and scale compared to other states'' (Docket No. EERE–2006–STD–0124–0010, CEC, No.1 at p. 11) As such, an analysis of water pressure in California may not be representative of water pressure nationally. DOE is not aware of available national-level data on water pressure levels in residential dwellings.

The requirement in Appendix T to average the total flush volumes recorded at all test pressures is consistent with ASME A112.19.2–2018, which is an industry consensus standard. The ASME industry-consensus process includes input from a wide variety of national stakeholders. For all the reasons DOE discussed in this section, DOE is not proposing changes to the water pressure and averaging requirements in Appendix T.

DOE requests comment on whether the current test method of averaging of results from the different test pressures to determine the water use of a water closet or urinal is representative of an average use cycle or period of use, and is not unduly burdensome to conduct.

DOE requests comment and data regarding water pressures at product installation sites, and information on how water pressures vary in different locations across the nation.

DOE also proposes to remove the static pressure requirements for flushometer valve water closets (with a siphonic bowl and blowout bowl) in section 3.a.ii. of Appendix T, and instead reference the static pressure requirement provided in Table 5 of ASME A112.19.2–2018. As discussed in the October 2013 Final Rule, stakeholders commented that ASME A112.19.2–2008 (the version of the standard currently incorporated by reference in Appendix T) published incorrect static pressure requirements for flushometer valve water closets and that the industry standard committee would be addressing this error in the subsequent version of the standard. 78 FR 62970, 62977. DOE specified the correct static pressures as part of the regulatory text in Appendix T in the October 2013 final rule. 78 FR 62970, 62977 In this NOPR, DOE is proposing to incorporate by reference ASME A112.19.2–2018, which includes the correct static pressure requirements. These static pressure requirements mirror the static pressure requirements currently specified in Appendix T.

DOE requests comment on removing the static pressure requirements in Appendix T section 3.a.ii. and instead referencing the static pressure requirement provided in Table 5 of ASME A112.19.2–2018.

Finally, in section 3.b of Appendix T, DOE proposes to replace the reference to section 8.6.4 of ASME A112.19.2–2008 with Table 6 of ASME A112.19.2–2018. Section 8.6.4 in ASME A112.19.2–2008 is referenced to specify the test pressures required for testing. Section 8.6.4 of ASME A112.19.2–2008 (and the

[14] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy. *Petition to Exempt from Preemption California's Water Efficiency Standards for Residential Clothes Washers.* 2005. (Last accessed December 13, 2019.) The September 2005 material from this website is available in Docket #EERE–2006–STD–0124–0010 at *www.regulations.gov.*

2018 version) in turn references Table 6 of the ASME standard, which provides the required test pressures. Section 8.6.4 of ASME A112.19.2–2008 (and the 2018 version) also provides performance specifications that are not relevant for the purpose of meeting DOE water use standards in 10 CFR 430.32(r). Accordingly, DOE proposes to reference Table 6 directly for the purpose of specifying the required test pressures.

DOE requests comment on replacing the static pressure requirements in Appendix T section 3.b from section 8.6.4 of ASME A112.19.2–2008 with Table 6 of ASME A112.19.2–2018.

F. Additional Directions Regarding Recorded & Calculated Values

Appendix T provides direction regarding the resolution of the recorded values; rounding of recorded and calculated values; and test set-up as it relates to manufacturer installation instructions. In the August 2019 RFI, DOE requested comment on whether these directions are necessary to ensure that the test procedures are reasonably designed to measure the water use of water closets and urinals during a representative average use cycle or period of use. 84 FR 37973.

In response, PMI suggested, without elaboration, that DOE should remove the additional directions beyond the ASME standard in Appendix T as they are no longer necessary. (PMI, No. 3 at p. 3) NRDC and ASAP commented that the additional directions to the version currently incorporated by reference in Appendix T, ASME A112.19.2–2008, are necessary because the industry standard has several weaknesses that subsequent revisions of the voluntary industry standard have failed to remedy. (NRDC and ASAP, No. 5 at p. 1)

Having considered these comments, DOE is not proposing to eliminate the additional directions in Appendix T. As noted, PMI did not provide any explanation as to why the additional directions are no longer necessary, and did not indicate that these additional instructions are the cause of any burden to manufacturers. As discussed, the additional directions include consistent resolution of the recorded values; rounding of calculated values; and test set-up as it relates to manufacturer installation instructions, which are not specified in ASME A112.19.2–2018, but are needed for compliance purposes.

Section 2 of Appendix T specifies that any measurements shall be recorded at the resolution of the test apparatus, and calculations of water consumption (*i.e.,* flush volume) are consistently rounded to the same number of significant digits as the previous step. While sections 7.3.2 and 8.6.1 of ASME A112.19.2–2018 specify the resolutions of the test apparatus to be used, sections 7.3.3 and 8.6.2 of ASME A112.19.2–2018 do not specify the resolution of recorded measurements. Instead, sections 7.3.3 and 8.6.2 of ASME A112.19.2–2018 specify only how the total calculated flush volume must be rounded, which is consistent with the resolution of the test apparatus. Accordingly, section 2 of Appendix T provides further detail for resolution and rounding requirements, which is consistent with ASME A112.19.2–2018.

Section 3.a.iii. of Appendix T provides further specifications on water level and trim setting for cases in which the manufacturer has provided no instructions regarding such settings. Otherwise, the same section requires that flush volume and tank trim component adjustments shall be set in accordance with the printed instructions supplied by the manufacturer, consistent with section 7.1.2 of ASME A112.19.2–2018. In the October 2013 final rule, DOE concluded that the specifications in ASME A112.19.2–2008 may not be adequate to ensure that manufacturers test gravity tank water closets at the maximum flush volume. 78 FR 62977. Specifically, DOE concluded that while section 7.1.2 of ASME A112.19.2–2008 specifies adjustments made to the tank water level and fill time, it does not specify adjustments made to other trim components such as (but not limited to) the flapper valve, fill valve and tank water level, which could be adjusted to increase flush volume. *Id.* Accordingly, for those products that do not include printed installation instructions, Appendix T specifies setting these trim components to the maximum water use setting so that the maximum flush volume is produced without causing the water closet to malfunction or leak. The latest version of the ASME standard, ASME A112.19.2–2018, does not provide any further specifications on adjusting the trim components in cases where the manufacturer has provided no instructions regarding these components. Therefore, the additional specifications provided by Appendix T are still warranted for testing products without printed instructions supplied by the manufacturer. For these reasons, DOE is proposing that the current additional directions provided in Appendix T be maintained.

NRDC and ASAP also suggested adding other directions to increase the precision of the measurement and rounding requirements for measuring flush volume from the 0.07 gallons specified in ASME 112.19.2–2008 and 112.19.2–2018 to 0.01 gallons.[15] (NRDC and ASAP, No. 5 at p. 2) (NRDC and ASAP, No. 5 at p. 2) They asserted that Appendix T results in measurements that are not representative of water consumption during a representative average usage cycle or period of use. *Id.* NRDC and ASAP stated that the current measurement and rounding requirements allow for models that use up to 0.07 gallons per flush (''gpf'') in excess of the DOE standard to be certified as meeting the standard. *Id.* NRDC and ASAP commented that at the current DOE standard of 1.6 gpf for water closets, Appendix T allows for a model with an exceedance of up to 4.4% to be certified and, at the current DOE standard of 1.0 gpf for urinals, Appendix T allows for an exceedance of up to 7% to be certified. *Id.* While NRDC and ASAP noted that DOE requirements at 10 CFR 429.30(b) and 10 CFR 429.31(b) require certification reports for water closets and urinals to include the maximum water use in gallons per flush rounded to the nearest 0.01 gallon, they stated that the current ASME test procedure incorporated by reference is not adequate to achieve the precision required by the current certification requirements for water closets. *Id.* Accordingly, NRDC and ASAP recommended that DOE add directions for testing water closet and urinal water consumption to require test equipment resolution of 0.01 gallon and rounding to the nearest 0.01 gallon. *Id.*

In the context of rounding resolution, ASME A112.19.2–2018 provides resolution requirements that are incorporated by reference in Appendix T. The rounding resolution for flush volume is derived from the resolution specification in ASME A112.19.2–2018 for the apparatus used to measure flush volume. ASME A112.19.2–2018 specifies that the receiving vessel, load cell, or other apparatus used to measure flush volume be capable of measuring volumes to within 0.25 L (0.07 gal). See sections 7.3.2 and 8.6.1 of ASME A112.19.2–2018 for water closets and

[15] ASME A112.19.2–2008, section 7.4.2 (''Apparatus''), which is the version currently incorporated by reference, specifies that the apparatus for measuring flush volumes of water closets must be capable of reading increments not exceeding 0.25 liters (0.07 gallons). Section 7.4.3 (''Procedure''), which is incorporated by reference, specifies that the results of each test run are to be rounded down to the nearest 0.25 L (0.07 gal). The requirements are applicable to urinals in section 8.6.1 (''Apparatus'') and 8.6.2 (''Procedure''). The same requirements are also found in the latest version of the ASME standard, ASME A112.19.2–2018. Appendix T requires recording measurements at the resolution of the test instrumentation and rounding calculations of water consumption for each tested unit to that same number of significant digits. Section 2(a) and (b) of Appendix T.

urinals, respectively. Therefore, the ASME A112.19.2–2018 rounding resolution reflects the resolution specifications of the equipment required for use in the test procedure.

Further, section 7.3.3 and 8.6.2 of ASME A112.19.2–2018 requires that the tests be repeated three times at each of the test pressures. The final measured flush volume for each tested unit is the average of the total flush volumes recorded at each test pressure. In addition, DOE sampling requirements for represented values of water consumption requires that the minimum number of units tested shall be no less than two. *See* 10 CFR 429.30 and 10 CFR 429.31. Although ASME A112.19.2–2018 specifies measuring flush volume with a vessel, load cell, or apparatus capable of measuring volumes to within 0.25 L (0.07 gal), in all likelihood the repetition of the test and the sampling requirements would average together a range of variations around the nominal measurement; therefore, any variation in the final reported value (resulting from the specified apparatus resolution) is likely to be less than the maximum theoretical level of variation indicated by the commenters.

DOE expects that changes in equipment resolution and rounding requirements could require currently certified water closets and urinals to be retested and recertified. Currently, DOE has no indication that manufacturers are using the ASME A112.19.2–2018 instrument resolution and rounding requirements as a means for exceeding the DOE standard. Further, the benefits from improved resolution would be uncertain given the testing and sampling requirements discussed, but could create additional manufacturer burden. For these reasons, DOE is proposing to maintain the current specifications in Appendix T regarding measurement and rounding specifications.

DOE requests comment on maintaining the current instrument resolution specifications. DOE also requests comment on whether it should specify implementing an instrument resolution of 0.01 to match the DOE reporting requirements, and the associated testing or reporting burden associated with such a change.

DOE requests comment on the level of precision used by industry and test laboratories for measuring and rounding when performing tests for water consumption. Specifically, DOE requests comment on whether the apparatus used for testing generally has a resolution of 0.25 L (0.07 gal) or whether the resolution is more precise.

G. Sampling

In the August 2019 RFI, DOE requested comment on measures that, consistent with EPCA, could be taken to lower the cost of its regulations that apply to water closets and urinals. 84 FR 37972. In response, PMI recommended removing the sample size requirement and instead, calculating the represented value based on only one sample, in line with the ASME standard. (PMI, No. 3 at p. 2) PMI acknowledged that, while there are reasons for testing more than one sample, the cost of compliance could be lowered by reducing sample size. *Id.*

The sampling provisions for water closets in 10 CFR 429.11 and 10 CFR 429.30 require testing at least two units. As PMI acknowledged, there are reasons for testing more than one sample. Relying on a sample size of at least two units is important to account for manufacturing variability and test uncertainty. Testing a minimum of two units and the associated statistics provide a sampling that is more representative of the total population of units than testing of only a single unit. For this reason, DOE is proposing to retain the minimum sample size of two units.

H. 10 CFR 430.23 Nomenclature

10 CFR 430.23(u) and (v) provide the test procedures for the measurement of water consumption for water closets and urinals, respectively. 10 CFR 430.23(u) requires that ''the maximum permissible water use allowed for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(a) of appendix T of this subpart.'' Similarly, 10 CFR 430.23(v) requires that ''the maximum permissible water use allowed for urinals, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(b) of appendix T of this subpart.'' The language ''maximum permissible water use'' in the aforementioned sections is incorrect, as the test procedures measure water use, and the term ''maximum permissible water use'' is instead descriptive of a water conservation standard. As such, DOE is proposing to replace the language ''the maximum permissible water use allowed'' in 10 CFR 430.23(u) and 10 CFR 430.23(v) with ''the water use''. This amendment would clarify that the DOE test procedures measure water use, whereas the standards in 10 CFR 430.32(q) and (r) establish the maximum allowable water use for water closets and urinals, respectively.

DOE requests comment on the proposed updates for water closets and urinals to replace ''maximum permissible water use allowed'' with ''water use'' in 10 CFR 430.23(u) and (v), respectively.

I. Dual-Flush Water Closets

The CA IOUs recommended that DOE consider the differences between single- and dual-flush water closets, and that DOE further research and differentiate between water closet classes. (CA IOUs, No. 4 at p. 2) The CA IOUs stated that the CA IOU CASE Report indicated insufficient data on dual-flush water closet usage patterns in real buildings to justify or verify what the CA IOUs described as a 2:1 flush ratio in the current water closet test procedure. The CA IOUs recommended that DOE consider an approach that takes the sum of the flush volumes from both flushes in the dual-flush, also known as the full-volume flush, into account. *Id.*

A dual-flush water closet is defined as a water closet incorporating a feature that allows the user to flush the water closet with either a reduced or a full volume of water. 10 CFR 430.2. The Federal test procedure does not include a 2:1 full-volume to reduced-volume flush ratio to determine a representative flush volume for dual-flush water closets, or average flush volume for dual flush water closets. Rather, section 3.a of Appendix T requires measuring the water flush volume for dual flush water closets separately for the full-flush and reduced-flush modes in accordance with section 7.4 of ASME A112.19.2–2008, but does not provide a method for averaging the results from testing the two modes. Because the water use standards in 10 CFR 430.32(q) are based on maximum allowable water use, certification reports and compliance with standards are based on the flush volume obtained from testing the full-flush mode. 10 CFR 429.30(b)(2).

In the October 2013 final rule, DOE determined that it did not have sufficient evidence on which to base a test procedure for representative average water use for dual-flush water closets (*i.e.,* representative water use reflecting an average of the full and reduced flush modes). 78 FR 62970, 62976. Furthermore, DOE stated that it was not establishing either a separate standard or separate certification requirements for the full-flush and reduced-flush modes for dual-flush water closets. *Id.* DOE does not have information or data that would suggest a different determination is warranted.

In the October 2013 final rule, DOE also emphasized that manufacturers, distributors, retailers, and private

labelers are not permitted to make any representations of water use for dual-flush water closets other than the maximum flush volume (*e.g.,* average representative water use reflecting an average of the full and reduced flush modes) because DOE did not adopt a test procedure to calculate average representative water use for dual-flush water closets. *Id.* Under 42 U.S.C. 6293(c)(1) and (2), no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the water use of a water closet unless that representation is based on testing conducted in accordance with the relevant DOE test procedures. *Id.*

The Environmental Protection Agency (''EPA'') WaterSense program [16] has a specification for measuring the flush volume of dual-flush water closets and uses a weighted average of the full and reduced flush volumes for residential toilets. In the October 2013 final rule, DOE stated that parties may state that a dual-flush water closet complies with the requirements of EPA's WaterSense program, either in writing or through use of the appropriate WaterSense label, as long as such representations are made in accordance with EPA specifications and such representations do not include a specific value of average representative water use. 78 FR 62970, 62976.

J. Additional Comments

DOE also received comments related to standards for dual-flush water closets and installation of generic replacement flapper valves. As explained below, both topics are beyond the scope of this test procedure rulemaking.

The CA IOUs recommended amending the standard for dual-flush toilets to a maximum of 1.28 gpf for the full-volume flush. (CA IOUs, No. 4 at p. 2) As stated, DOE is issuing this NOPR as part of its obligation to review test procedures for these products. This follows EPCA's direction that if the requirements of ASME A112.19.6–1990 are revised at any time and approved by ANSI, DOE must amend the Federal test procedures to conform to the revised ASME/ANSI requirements, unless DOE determines by rule that to do so would not meet the statutory requirements for test procedures. (42 U.S.C. 6293(b)(8)(B)) Additionally, this NOPR addresses the periodic review of test procedures required by EPCA. (42 U.S.C. 6293(b)(1)) The maximum water use standards for water closets are not part of the test procedure and are therefore outside the scope of this rulemaking.

Reaves commented that current test procedure for toilets do not consider the full life cycle of the products being tested and unintentionally result in a significantly inflated measured water savings. (Reaves, No. 6 at p. 1) Reaves stated that installation of generic replacement flapper valves after initial installation often eliminates most of the estimated and expected lifetime water savings. *Id.* Reaves recommended that the test procedure consider the toilet flush volume specification with readily available market replacement parts expected to be used upon flapper valve replacement to achieve the water savings promised by standards. *Id.*

DOE's energy conservation standards and test procedures apply to new water closets. (42 U.S.C. 6302(a)(5)); *see also,* 78 FR 62977 (October 23, 2013). As such, the DOE test procedure for water closets addresses the product as manufactured, not as it may subsequently be modified by the consumer. As a result, consideration of replacement flapper valves is outside the scope of this rulemaking.

K. Smart and Connected Technologies

The August 2019 RFI sought comments, data and information on the issues related to the emerging smart technology market as they may apply to water closets and urinals. 84 FR 37973. The August 2019 RFI referenced a separate RFI on the emerging smart technology appliance and equipment market, in which DOE requested information to better understand related market trends and other issues to ensure that DOE did not inadvertently impede innovation while fulfilling its statutory obligations. 83 FR 46886 (Sept. 17, 2018; ''September 2018 RFI'').

In response to the August 2019 RFI, the CA IOUs commented that emerging technologies and smart technologies are applicable to water closets and urinals and should be considered in this and future test procedures. (CA IOUs, No. 4 at p. 3) The CA IOUs stated that sensor technology has improved significantly and there is more widespread adoption of electronic, hands free flushing operations. *Id.* They also stated that there have been developments in sensor technology that allow for more reliable testing of water level. *Id*) The CA IOUs recommended further evaluation of this and other sensors including ultrasonic, mechanical vibration-based approaches, and radio-frequency identification (''RFID'') readers. *Id.*

As stated in the September 2018 RFI, DOE recognizes that manufacturers are developing ''connected'' products, allowing for options such as remote control access, automatic supply replenishment, and intelligent energy consumption. 83 FR 46887. DOE is seeking to avoid inhibiting the market for ''smart'' products through its standards and test procedure development process. *Id.* Appendix T measures the flush volume of a single flush, and does not measure water levels in water closets or overflow. Under Appendix T, the procedures for measuring flush volume of water closets and urinals do not distinguish between flushing mechanisms activated manually as compared to those activated by sensor; therefore, the procedures would not impede the use of sensors. The CA IOUs did not indicate that the technologies it referenced are impeded by either the DOE test procedure or compliance with the maximum water use standard. DOE will continue to evaluate advances in sensors and smart technology, including any efforts to address these issues by industry.

L. Replacing ''Instrumentation'' With ''Apparatus'' in Appendix T

In section 2 of Appendix T, DOE references the term ''instrumentation,'' several times. However, the term ''instrumentation'' is not used in the industry standard; rather, the synonymous term ''apparatus'' is used. ''Apparatus'' is also used throughout Appendix T, in addition to ''instrumentation.'' Therefore, to maintain consistency with the nomenclature used in ASME A112.19.2–2018, DOE is proposing to replace the term ''instrumentation'' with ''apparatus'' in Appendix T.

DOE requests comment on the proposal to replace the term ''instrumentation'' with ''apparatus.''

M. Test Procedure Costs, Harmonization, and Other Topics

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. 42 U.S.C. 6314(a)(2). In this NOPR, DOE is proposing to amend the existing test procedures for water closets and urinals by incorporating by reference the most recent version of the referenced industry standard, ASME A112.19.2–2018; updating the term ''blowout toilet'' to ''blowout bowl;'' and adding definitions for the terms ''gravity flush tank water closet,'' ''siphonic action,'' ''siphonic bowl,'' and ''trough-type urinal,'' which

[16] WaterSense is a voluntary partnership program administered by the EPA that, among other activities, promotes water conservation by providing certification and labeling for water consuming products, including water closets, that meet certain water conservation limits beyond the mandatory standards DOE implements.

are currently used in Appendix T, but not defined. DOE has tentatively determined that these proposed amendments would not be unduly burdensome for manufacturers.

Further discussion of the cost impacts of the proposed test procedure amendments are presented in the following sections.

(a) Updating to Current Industry Standards

DOE proposes to amend the existing test procedures for water closets and urinals by incorporating by reference the most recent version of the referenced industry standard, ASME A112.19.2–2018. As discussed, DOE's review of the 2018 version compared with the 2008 version, identified the following two updates to sections relevant to the Federal test procedure include: (1) Editorial changes and clarifications; and (2) a correction in section 8.2.1 to the water consumption static test pressure value for urinals to reflect the corresponding value in Table 6. DOE has tentatively determined that the amendments in ASME A112.19.2–2018 would not impact (1) the measured values of water use for water closets and urinals under Appendix T, (2) the representativeness of the results, or (3) the test burden. In addition, incorporation of ASME A112.19.2–2018 would harmonize DOE's test procedures with current industry practice.

(b) New and Amended Definitions

DOE proposes to update the replace ''blowout toilet'' with ''blowout bowl water closet'' and use the corresponding definition in ASME A112.19.2–2018. DOE has tentatively determined that the terms are understood to include the same products. In addition, incorporation of ''blowout bowl'' per ASME A112.19.2–2018 would harmonize the term and definition in the DOE's test procedures with current industry practice.

DOE also proposes to add definitions for ''gravity flush tank water closet,'' ''siphonic bowl'' and ''siphonic action'' as defined in ASME A112.19.2–2018, and for ''trough-type urinal'' as defined in California Title 20 Appliance Efficiency Regulations. Each of these aforementioned terms are used in either Appendix T, 10 CFR 430.2(q), 10 CFR 430.2(r), or within another definition; however, none of these terms is currently defined in 10 CFR 430.2. DOE has tentatively determined that the proposed definitions would harmonize the DOE's test procedures with current industry practice.

(c) Costs and Impacts

Based on these tentative conclusions, none of the proposed amendments to Appendix T and the associated definitions would require manufacturers to test water closets and urinals that are not already required to be tested). Additionally, none of the proposed amendments would require manufacturers to re-test or re-certify any existing models on the market that have already been tested using Appendix T and properly certified. Therefore, were DOE to adopt these proposed test procedure amendments, water closet and urinal manufacturers would not incur any additional costs.

DOE requests comment on its understanding that there will be no impact or costs to water closet and urinal manufacturers under the proposed amendments.

2. Harmonization With Industry Standards

The test procedures for water closets and urinals at Appendix T incorporate by reference ASME A112.19.2–2008, relying on certain provisions of that industry standard. The provisions of the industry standard referenced in the Federal test procedure provide procedures for testing and measuring water consumption, specifications for test apparatus, and other general requirements for water closets and urinals. The industry standard DOE proposes to incorporate by reference *via* amendments described in this notice are discussed in further detail in section IV.M of this document.

DOE requests comment on the benefits and burdens of the proposed updates and additions to industry standards referenced in the DOE test procedure for water closets and urinals.

In the August 2019 RFI, DOE requested comment on the benefits and burdens of, or any other comments regarding, adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification. 84 FR 37973. PMI responded by stating that certification agencies in the U.S. already require manufacturers of water closets and urinals to certify their products in accordance with the latest version of ASME A112.19.2–2018; therefore, it is important for DOE to match all the test procedures outlined in the recent ASME standard (including all terms, definitions, figures and tables) without modification. (PMI, No. 3 at p. 3) The CA IOUs commented generally that DOE should not adopt any industry/voluntary consensus-based method without modification because that risks limiting opportunity for stakeholder participation in the development and adoption of Federal requirements. (CA IOUs, No. 4 at p. 4) The CA IOUs stated that DOE must ensure transparency and that incorporated industry test procedures are fully vetted through the public rulemaking process. *Id.*

DOE is proposing to amend the test procedures consistent with the most recent version of the referenced industry standard, ASME A112.19.2–2018, and through this NOPR is providing an opportunity for comment on its proposal. As noted, EPCA directs that if the requirements of ASME A112.19.6–1990 are revised at any time and approved by ANSI, DOE must amend the test procedures for water closets and urinals to conform to the revised ASME standard, unless DOE determines by rule that to do so would not meet the requirements of EPCA that the test procedures be reasonably designed to produce test results which measure water use during a representative average use cycle as determined by DOE, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(8)(B)) As discussed, DOE has proposed maintaining the additional direction in Appendix T, which DOE previously determined is necessary to provide for consistent resolution of recorded values, rounding of recorded and calculated values, and test set-up as it relates to manufacturer installation instructions.

DOE seeks further comment on the degree to which the DOE should consider harmonizing Appendix T with the most recent relevant industry standard for water closets and urinals, and whether there are any changes to the Federal test method that would produce test results that provide additional benefits to the public as compared to the current DOE test procedure or the relevant industry standard. DOE also requests comment on the benefits and burdens of, or any other comments regarding, adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification.

3. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedure for water closets and urinals. DOE issued an RFI to seek more information on whether, as required by EPCA, its test procedures are reasonably designed, to produce results that measure the energy and water use or efficiency of products during a representative average use cycle or period of use. 84 FR 9721 (Mar. 18, 2019). DOE particularly seeks

comment on this issue as it pertains to the test procedures for water closets and urinals, as well as information that would help DOE create procedures that are not unduly burdensome to conduct. Comments regarding repeatability and reproducibility are also welcome.

N. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) If DOE were to publish an amended test procedure, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period following publication and must detail how the manufacturer will experience undue hardship. *Id.*

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc/office-general-counsel.*

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has tentatively concluded that this proposed rule will not have a significant impact on a substantial number of small entities. The factual basis for this determination is as follows:

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (''NAICS'') that are available at: *https://www.sba.gov/document/support--table-size-standards.* DOE used three NAICS codes to cover all potential products for this rulemaking: 327110 (pottery, ceramics, and plumbing fixture manufacturing); 326191 (plastics plumbing fixture manufacturing); 332999 (all other miscellaneous fabricated metal product manufacturing). The threshold for NAICS classification code 327110 (pottery, ceramics, and plumbing fixture manufacturing), which includes most urinals and water closets covered by this rulemaking, is 1,000 employees or fewer. The threshold for NAICS classification codes 326191 (plastics plumbing fixture manufacturing) and 332999 (all other miscellaneous fabricated metal product manufacturing) is 750 employees or fewer. Since NAICS classification code 327110 includes the majority of water closet and urinal manufacturing and DOE assumes that most, if not all, water closet and urinal manufacturers make at least some products covered by that NAICS classification code, DOE used the more conservative 1,000 employee threshold value for this regulatory flexibility analysis.

DOE collected data from DOE's compliance certification database [17] to identify manufacturers of water closets and urinals. DOE then consulted publicly-available data and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a ''small business'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE identified 19 small businesses that manufacture either water closets or urinals covered by the proposed test procedure.

As described in section III.L.1 of this document, the amendments proposed in this test procedure would not increase costs to water closet or urinal manufacturers, including small businesses. Therefore, DOE tentatively concludes that the impacts of the test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of water closets and urinals must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including water closets and urinals. *See, generally,* 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The collection-of-information requirement for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including water closets and urinals has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed testing procedures impose no

[17] *www.regulations.doe.gov/certification-data* (Last accessed December 12, 2019).

new information collection requirements beyond those approved by OMB in control number 1910–1400.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for water closets and urinals. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *https://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the water use of water closets and urinals is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for water closets and urinals would incorporate testing methods contained in certain sections of the following commercial standard: ASME A112.19.2–2018. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard jointly published by the American Society of Mechanical Engineers (''ASME'') and the Canadian Standards Association (''CSA Group'') titled ASME A112.19.2–2018. ASME A112.19.2–2018 is an industry-accepted test procedure that measures water consumption for water closets and urinals, and is applicable to products sold in North America. The test procedure proposed in this NOPR references various sections of ASME A112.19.2–2018 that address test setup, apparatus, test conduct, and calculations. These sections of ASME A112.19.2–2018 are Section 7.1 ''General,'' Section 7.1.1 ''All tests,'' Section 7.1.2 ''Gravity flush tank water closets,'' Section 7.1.3 ''Flushometer tank, electro-hydraulic, or other pressurized flushing device water closets,'' Section 7.1.4 ''Flushometer valve water closets,'' Section 7.1.5 ''Procedures for standardizing the water supply system,'' Section 7.3 ''Water consumption test,'' Section 7.3.3 ''Procedure,'' Section 7.3.5 ''Performance,'' ''Section 8.2 ''Test apparatus and general instructions,'' Section 8.2.1, Section 8.2.2, and Section 8.2.3, Section 8.6 ''Water Consumption Test,'' Section 8.6.4 ''Performance,'' Table 5 ''Static test pressures for water closets, kPa (psi),'' and Table 6 ''Static test pressures for urinals, kPa (psi).''

Copies of ASME Standard A112.19.2–2018 may be purchased from the ASME at Two Park Avenue, New York, NY 10016, or by going to *https://www.asme.org/codes-standards/find-codes-standards/a112-19-2-csa-b45-1-ceramic-plumbing-fixtures?productKey=J0121TM1:J0121TM1.*

V. Public Participation

A. Participation in the Webinar

The time and date webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://cms.doe.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Additionally, you may request an in-person meeting to be held prior to the close of the request period provided in the **DATES** section of this document. Requests for an in-person meeting may be made by contacting Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

B. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information

(''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email to *PlumbingProducts2017TP0028@ee.doe.gov* or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

C. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposal to incorporate by reference ASME A112.19.2–2018.

(2) DOE requests comment on its proposal to remove references to section 7.1 and 8.2 of ASME A112.19.2–2018 in Appendix T.

(3) DOE requests comment on the proposal to replace the term ''toilet'' with ''water closet'' in 10 CFR 430.32(q).

(4) DOE requests comment on the proposal to replace the term ''electromechanical hydraulic toilet'' with ''electromechanical hydraulic water closet,'' while retaining the existing regulatory definition of ''electromechanical hydraulic toilet.''

(5) DOE requests comment on the proposal to replace all instances of ''blowout toilet'' and ''blowout water closet'' in Appendix T and 10 CFR 430.32(q) with ''blowout bowl water closets.''

(6) DOE requests comment on the proposal to adopt the term ''blowout action'' and its corresponding definition from ASME A112.19.2–2018.

(7) DOE requests comment on its proposal to adopt the definitions from ASME A112.19.2–2018 for the term ''gravity flush tank water closet''.

(8) DOE requests comment on the proposal to replace the term ''gravity tank-type toilets'' with ''gravity flush tank water closets'' in its regulations.

(9) DOE requests comment on its proposal to adopt the definition from ASME A112.19.2–2018 for the term ''siphonic bowl.''

(10) DOE requests comment on the proposal to replace the term ''siphonic water closets'' with ''siphonic bowl water closets'' in its regulations.

(11) DOE requests comment on the proposal to adopt the term ''siphonic action'' and its corresponding definition from ASME A112.19.2–2018.

(12) DOE requests comment on the proposal to define the term ''trough-type urinal'' as ''a urinal designed for simultaneous use by two or more people.'' DOE specifically requests comment on whether the proposed definition would include products not currently understood to be trough-type urinals, or whether it would exclude products currently understood to be trough-type urinals. In addition, DOE requests comments on whether any physical characteristics or features differentiate trough-type urinals from other urinals.

(13) DOE requests comment on whether the current test method of averaging of results from the different test pressures to determine the water use of a water closet or urinal is representative of an average use cycle or period of use, and is not unduly burdensome to conduct.

(14) DOE requests comment and data regarding water pressures at product installation sites, and information on how water pressures vary in different locations across the nation.

(15) DOE requests comment on removing the static pressure requirements in Appendix T section 3.a.ii. and instead referencing the static pressure requirement provided in Table 5 of ASME A112.19.2–2018.

(16) DOE requests comment on replacing the static pressure requirements in Appendix T section 3.b from section 8.6.4 of ASME A112.19.2–2008 with Table 6 of ASME A112.19.2–2018.

(17) DOE requests comment on maintaining the current instrument resolution specifications. DOE also requests comment on whether it should specify implementing an instrument resolution of 0.01 to match the DOE reporting requirements, and the associated testing or reporting burden associated with such a change.

(18) DOE requests comment on the level of precision used by industry and test laboratories for measuring and rounding when performing tests for water consumption. Specifically, DOE requests comment on whether the apparatus used for testing generally has a resolution of 0.25 L (0.07 gal) or whether the resolution is more precise.

(19) DOE requests comment on the proposed updates for water closets and urinals to replace ''maximum permissible water use allowed'' with ''water use'' in 10 CFR 430.23(u) and (v), respectively.

(20) DOE requests comment on the proposal to replace the term ''instrumentation'' with ''apparatus.''

(21) DOE requests comment on its understanding that there will be no impact or costs to water closet and urinal manufacturers under the proposed amendments.

(22) DOE requests comment on the benefits and burdens of the proposed updates and additions to industry standards referenced in the DOE test procedure for water closets and urinals.

(23) DOE seeks further comment on the degree to which the DOE should consider harmonizing Appendix T with the most recent relevant industry standard for water closets and urinals, and whether there are any changes to the Federal test method that would produce test results that provide additional benefits to the public as compared to the current DOE test procedure or the relevant industry standard. DOE also requests comment on the benefits and burdens of, or any other comments regarding, adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 2, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 4, 2021.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:
■ a. Removing the definition for ''Blowout toilet;''
■ b. Removing ''Electromechanical hydraulic toilet'' and adding in its place, ''Electromechanical hydraulic water closet;'' and
■ c. Adding in alphabetical order, definitions for, ''Blowout action,'' ''Blowout bowl,'' ''Gravity flush tank water closet,'' ''Siphonic action,'' ''Siphonic bowl,'' and ''Trough-type urinal.''

The additions read as follows:

§ 430.2 Definitions.

* * * * *

Blowout action means a means of flushing a water closet whereby a jet of water directed at the bowl outlet opening pushes the bowl contents into the upleg, over the weir, and into the gravity drainage system.

Blowout bowl means a non-siphonic water closet bowl with an integral flushing rim, a trap at the rear of the bowl, and a visible or concealed jet that operates with a blowout action.

* * * * *

Electromechanical hydraulic water closet means any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet bowl.

* * * * *

Gravity flush tank water closet means a water closet designed to flush the bowl with water supplied by gravity only.

* * * * *

Siphonic action means the movement of water through a flushing fixture by creating a siphon to remove waste material.

Siphonic bowl means a water closet bowl that has an integral flushing rim, a trap at the front or rear, and a floor or wall outlet, and operates with a siphonic action (with or without a jet).

* * * * *

Trough-type urinal means a urinal designed for simultaneous use by two or more people.

* * * * *

■ 3. Section 430.3 is amended by adding paragraph (h)(3) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) * * *

(3) ASME A112.19.2–2018/CSA B45.1–18, (''ASME A112.19.2–2018''), ''Ceramic plumbing fixtures,'' approved 2018, IBR approved for appendix T to subpart B.

* * * * *

■ 4. Section 430.23 is amended by revising paragraphs (u) and (v) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(u) *Water closets.* The water use for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(a) of appendix T of this subpart.

(v) *Urinals.* The water use for urinals, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(b) of appendix T of this subpart.

* * * * *

■ 5. Appendix T to subpart B of part 430 is revised to read as follows:

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

Note: After [date 180 days after date of publication of water closets and urinals test procedure final rule], representations made with respect to the water consumption of water closets or urinals must fairly disclose the results of testing pursuant to this appendix.

On or after [date 30 days after date of publication of water closets and urinals test procedure final rule] and prior to [date 180 days after date of publication of water closets and urinals test procedure final rule] representations, including compliance certifications, made with respect to the water consumption of water closets or urinals must fairly disclose the results of testing pursuant to either this appendix as it appeared at 10 CFR part 430, subpart B, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2014. Representations made with respect to the water consumption of water closets or urinals tested within that range of time must fairly disclose the results of testing under the selected version. Given that after [date 180 days after date of publication of water closets

and urinals test procedure final rule] representations with respect to the water consumption of water closets and urinals must be made in accordance with tests conducted pursuant to this appendix, manufacturers may wish to begin using this test procedure as soon as possible.

0. Incorporation by reference

DOE incorporated by reference in § 430.3, the entire standard for ASME A112.19.2–2018; however, only enumerated provisions of that document apply to this appendix, as follows:

a. Section 7.1.2 ''Gravity flush tank water closets,'' as specified in section 2.a of this appendix;

b. Section 7.1.3 ''Flushometer tank, electro-hydraulic, or other pressurized flushing device water closets,'' as specified in section 2.a of this appendix;

c. Section 7.1.4 ''Flushometer valve water closets,'' as specified in section 2.a of this appendix;

d. Section 7.1.5 ''Procedures for standardizing the water supply system,'' as specified in section 2.a of this appendix;

e. Section 7.3 ''Water consumption test,'' as specified in section 3.a of this appendix;

f. Section 8.2.1, as specified in section 2.b of this appendix;

g. Section 8.2.2, as specified in section 2.b of this appendix

h. Section 8.2.3, as specified in section 2.b of this appendix;

i. Section 8.6 ''Water Consumption Test,'' as specified in section 3.b of this appendix;

j. Table 5 ''Static test pressures for water closets, kPa (psi),'' as specified in section 2.a and 3.a of this appendix; and

k. Table 6 ''Static test pressures for urinals, kPa (psi)'' as specified in section 2.a and 3.a of this appendix.

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over ASME A112.19.2–2018.

1. *Scope:* This appendix covers the test requirements used to measure the hydraulic performances of water closets and urinals.

2. Test Apparatus and General Instructions

a. When testing a water closet, use the test apparatus and follow the instructions specified in sections 7.1.1 (including Table 5), 7.1.2, 7.1.3, 7.1.4, and 7.1.5 of ASME A112.19.2–2018 (incorporated by reference, see § 430.3). The flushometer valve used in the water consumption test must represent the maximum design flush volume of the water closet. Record each measurement at the resolution of the test apparatus. Round each calculation of water consumption for each tested unit to the same number of significant digits as the previous step.

b. When testing a urinal, use the test apparatus and follow the instructions specified in sections 8.2.1, 8.2.2, and 8.2.3 (including Table 6) of ASME A112.19.2–2018. The flushometer valve used in the water consumption test must represent the maximum design flush volume of the urinal. Record each measurement at the resolution of the test apparatus. Round each calculation of water consumption for each tested unit to the same number of significant digits as the previous step.

3. Test Measurement

a. Water closets:

(i) Measure the water flush volume for water closets, expressed in gallons per flush (gpf) and liters per flush (Lpf), in accordance with section 7.3, Water Consumption Test, of ASME A112.19.2–2018 (incorporated by reference, see § 430.3). For dual-flush water closets, the measurement of the water flush volume shall be conducted separately for the full-flush and reduced-flush modes and in accordance with the test requirements specified section 7.3, Water Consumption Test, of ASME A112.19.2–2018. The final measured flush volume for each tested unit is the average of the total flush volumes recorded at each test pressure as specified in Table 5 ''Static test pressures for water closets, kPa (psi),'' of ASME A112.19.2–2018.

(ii) Flush volume and tank trim component adjustments: For gravity flush tank water closets, set trim components that can be adjusted to cause an increase in flush volume, including (but not limited to) the flapper valve, fill valve, and tank water level, in accordance with the installation instructions supplied by the manufacturer with the unit. If the installation instructions for the model to be tested do not specify trim setting adjustments, adjust these trim components to the maximum water use setting so that the maximum flush volume is produced without causing the water closet to malfunction or leak. Set the water level in the tank to the maximum water line designated in the installation instructions supplied by the manufacturer or the designated water line on the tank itself, whichever is higher. If the printed installation instructions or the water closet tank do not indicate a water level, adjust the water level to 1 ± 0.1 inches below the top of the overflow tube or 1 ± 0.1 inches below the top rim of the water-containing vessel (for gravity flush tank water closets that do not contain an overflow tube) for each designated pressure specified in Table 5 of ASME A112.19.2–2018.

b. Urinals—Measure water flush volume for urinals, expressed in gallons per flush (gpf) and liters per flush (Lpf), in accordance with section 8.6, Water Consumption Test, of ASME A112.19.2–2018. The final measured flush volume for each tested unit is the average of the total flush volumes recorded at each test pressure as specified in Table 6 ''Static test pressures for urinals, kPa (psi),'' of ASME A112.19.2–2018.

■ 6. Section 430.32 is amended by revising paragraph (q) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(q) *Water closets.* (1) The maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, shall be as follows:

Water closet type	Maximum flush rate (gpf (Lpf))
(i) Gravity flush tank water closet	1.6 (6.0)
(ii) Flushometer tank water closet	1.6 (6.0)
(iii) Electromechanical hydraulic water closet	1.6 (6.0)
(iv)Blowout bowl water closet	3.5 (13.2)

(2) The maximum water use allowed for flushometer valve water closets, other than those with blowout bowls, manufactured after January 1, 1997, shall be 1.6 gallons per flush (6.0 liters per flush).

* * * * *

[FR Doc. 2021–09695 Filed 5–19–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–TP–0025]

RIN 1904–AE55

Energy Conservation Program: Test Procedure for Commercial Prerinse Spray Valves

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedures for commercial prerinse spray valves to incorporate by reference the current version of the relevant industry standard, *i.e.,* ASTM F2324. ASTM F2324 (2019) is a reaffirmation of the industry standard currently incorporated by reference in the DOE test procedure for commercial prerinse spray valves and as such, this proposal would not substantively change the current test procedure. DOE also proposes to amend the commercial prerinse spray valves definition to codify existing guidance on the application of the definition. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than July 19, 2021. See section V, ''Public Participation,'' for details.

Meeting: DOE will hold a webinar on this proposed rule on Wednesday, June 9, 2021, from 10:00 a.m. to 3:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking on or before July 19, 2021. See section V, ''Public Participation,'' for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit, identified by docket number EERE–2019–BT–TP–0025, following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *CPSV2019TP0025@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0025 in the subject line of the message.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including *the Federal eRulemaking Portal, email, postal mail, or* hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket/EERE-2019-BT-TP-0025.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–0371. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following industry standard into 10 CFR part 431: ASTM Standard F2324–13 (R2019), ''Standard Test Method for Prerinse Spray Valves;'' Reapproved 2019 (''ASTM F2324–13 (R2019)'').

Copies of ASTM F2324–13 (R2019) can be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, or by going to *www.astm.org.*

For a further discussion of these standards, see section IV.M.

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I. Authority and Background

Commercial prerinse spray valves (''CPSV'' or ''CPSVs'') are included among the covered products for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6291(33); 42 U.S.C. 6293(b)(14); 42 U.S.C. 6295(dd)) DOE's energy conservation standards and test procedures for commercial prerinse spray valves are currently prescribed at 10 CFR part 431 subpart O.[1] The following sections discuss DOE's authority to establish test procedures for CPSVs and the relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of several consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [3] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency, which includes CPSVs. EPCA provides definitions for commercial prerinse

[1] Because Congress included commercial prerinse spray valves in Part valves in Part B of Title III of EPCA, the consumer product provisions of Part B (not the industrial equipment provisions of Part C) apply to commercial prerinse spray value. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE placed the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. Part 431 contains DOE regulations for commercial and industrial equipment. DOE refers to commercial prerinse spray valves as either ''products'' or ''equipment.''

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[3] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

spray valves under 42 U.S.C. 6291(33), the test procedure under 42 U.S.C. 6293(b)(14), and energy conservation standards for flow rate under 42 U.S.C. 6295(dd).

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) Making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

With respect to CPSVs, EPCA requires DOE to use ASTM Standard F2324 (''ASTM F2324'') as the basis for the test procedure for measuring flow rate. (42 U.S.C. 6293(b)(14))

Further, EPCA requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including CPSVs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days.[4] *Id.* In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. *Id.* If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE's existing test procedures for CPSVs appear at 10 CFR part 431, subpart O. DOE most recently amended the test procedure for CPSVs in a final rule published December 30, 2015, in which DOE incorporated by reference the 2013 version of ASTM F2324 (''ASTM F2324–13''). 80 FR 81441 (''December 2015 Final Rule''). Also during the December 2015 Final Rule, DOE revised the definition of ''commercial prerinse spray valve,'' made minor adjustments to the DOE flow rate test method, and included a definition of ''spray force'' as well as added a test method for measuring the spray force of CPSVs. In 2019, ASTM reaffirmed the 2013 standard (''ASTM F2324–13 (2019)''). The 2019 version contains no changes from the 2013 version.

On June 5, 2020, DOE published a request for information soliciting public comment and data on all aspects of the existing DOE test procedure for CPSVs, including (1) the scope and definition of the test procedure, (2) incorporation of the reaffirmed industry standard, and (3) the representativeness of the test water pressure. 85 FR 34541 (''June 2020 RFI''). DOE also received a comment requesting an extension of the original comment period and on July 21, 2020, DOE reopened the comment period for an additional 30 days to close on August 20, 2020. 85 FR 44026.

DOE received comments in response to the June 2020 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO JUNE 2020 RFI

Organization(s)	Reference in this NOPR	Organization type
Plumbing Manufacturers Inc	PMI	Trade Association.
Pacific Gas and Electric Company (''PG&E''), San Diego Gas and Electric (''SDG&E''), and Southern California Edison (''SCE'').	CA IOUs	Utilities.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.

[4] DOE has historically provided a 75-day comment period for test procedure NOPRs, consistent with the comment period requirement for technical regulations in the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, Congress repealed the NAFTA Implementation Act and has replaced NAFTA with the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11, thereby rendering E.O. 12889 inoperable. Consequently, since the USMCA is consistent with EPCA's public comment period requirements and normally requires only a minimum comment period of 60 days for technical regulations, DOE now provides a 60-day public comment period for test procedure NOPRs.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update 10 CFR 431.264, ''Uniform test method for the measurement of flow rate for commercial prerinse spray valves,'' as follows:

- Amend the CPSV definition to codify existing guidance on the application of the definition; and
- Incorporate by reference the reaffirmed industry standard—ASTM F2324–13 (2019), ''Standard Test Method for Prerinse Spray Valves.''

Table II.1 summarizes DOE's proposed action compared to the current test procedure, as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
A ''commercial prerinse spray valve'' is defined as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment''.	Amends the commercial prerinse spray valves definition to codify existing guidance on the factors DOE considers to determine whether the spray valve meets the suitability requirement in the definition. The proposed amendment does not change the scope of the definition.	Clarification of scope.
References the ASTM F2324–13	References reaffirmed industry standard-ASTM F2324–13 (2019).	Industry TP Reaffirmed in 2019.

DOE has tentatively determined that the proposed amendments described in section III of this document would not alter the measured flow rate or spray force of CPSVs, and that the proposed test procedures would not be unduly burdensome to conduct. Discussion of DOE's proposed actions are addressed in detail in section III of this document.

III. Discussion

A. Scope and Definition

''Commercial prerinse spray valve'' is defined as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.'' 10 CFR 431.262. In the June 2020 RFI, DOE requested comment as to how manufacturers are currently applying the existing definition and if any modifications to the definition are needed to more appropriately include or exclude products. 85 FR 34541, 34543.

In response to the June 2020 RFI, PMI commented that manufacturers are applying the current definition to CPSVs distributed and sold as part of a unit (*e.g.,* included with a wall mount, hose, overhead spring, etc.) and separately, typically as a replacement to a unit. (PMI No. 5 at p. 3) NEEA recommended that DOE review the definition to ensure that manufacturers and market actors are clear on which products must comply. NEEA stated that many valves on the market appear to meet the definition of CPSV but have flow rates above the energy conservation standard. (NEEA, No. 6 at p. 1) Specifically, NEEA referenced comments it submitted in response to an energy conservation standards RFI, regarding CPSVs[6] in which NEEA identified products that it stated appear to meet the definition of CPSV, but have represented flowrates above the current CPSV standard and/or are not included in DOE's Compliance Certification Management System. 85 FR 35383 (June 10, 2020) (NEEA, No. 6 at p. 1, referencing Docket No. EERE–2019–BT–STD–0034–0007 at p. 2) NEEA recommended that DOE conduct an investigation to ensure all products on the market comply with the standard. (NEEA, No. 6 at p. 1)

When surveying the market, DOE notes that a basic model of CPSVs may include more than one individual CPSV model. For the purpose of CPSVs, a basic model is defined as ''all spray settings of a given class manufactured by one manufacturer, which have essentially identical physical and functional (or hydraulic) characteristics that affect water consumption or water efficiency.'' 10 CFR 431.262. For each basic model that is subject to an applicable energy conservation standard, manufacturers must submit a certification report to DOE in accordance with the general requirements set out in 10 CFR 429.12 and the requirements specific to CPSVs at 10 CFR 429.51(b).

DOE recognizes that representations may be made by third-party retailers and distributers in addition to those by manufacturers. DOE reiterates that EPCA prohibits manufacturers, distributors, retailers, and private labelers of CPSVs from making any representation in writing (including a representation on a label) or in any broad advertisement, with respect to the energy use or efficiency or water use of a covered product to which a test procedure is applicable, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing. (42 U.S.C. 6293(c))

NEEA further stated that if necessary, DOE should also consider revisiting the definition for CPSV to ensure that manufacturers and market actors are clear on which products must comply to avoid non-compliance in the future. (NEEA, No. 6 at p. 1)

As explained in the June 2020 RFI and the December 2015 Final Rule, in determining whether a product is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment, DOE considers various factors including channels of marketing and sales, product design and descriptions, and actual sales to determine the spray valve's actual use in conjunction with commercial dishwashing and ware washing equipment. 85 FR 34541, 34543; 80 FR 81441, 81444. For example, a product

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for CPSVs. (Docket No. EERE–2019–BT–TP–0025, which is maintained at *www.regulations.gov/#!docketDetail;D=* EERE–2019–BT–TP–0025). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[6] On June 10, 2020, DOE initiated an early assessment review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for commercial prerinse spray valves. 85 FR 35383 (''June 2020 ECS RFI'').

marketed or sold through outlets that market or sell to food service entities such as restaurants or commercial or institutional kitchens is more likely to be considered suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment as compared to a product sold exclusively through outlets catering to pet care. *Id.* Similarly, a product marketed outside of the United States as suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment would be considered similarly suitable if distributed in the United States. *Id.* DOE also considers how a product is marketed and sold to end users, including how the product is identified and described in product catalogs, brochures, specification sheets, and communications with prospective purchasers. *Id.* Additionally, DOE considers actual sales, including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirect through an entity such as a distributor. *Id.*

In order to provide further certainty as to the definition of ''commercial prerinse spray valve'' DOE is proposing to amend the definition to include previously provided guidance on determining whether equipment is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.

Specifically, DOE proposes to define a ''commercial prerinse spray valve'' as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following: (1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors); (2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities); (3) Actual sales.''

The proposed amendment to the definition of ''commercial prerinse spray valve'' is not intended to change the scope of the definition. DOE is not proposing to cover equipment as a CPSV that is not already covered under the current definition. The proposal would codify in the CFR existing guidance on the application of the current definition. By codifying the guidance, manufacturers would have further certainty as to the application of the definition.

DOE requests comments on the proposed definition of CPSVs.

B. Updates to Industry Standards

Currently, DOE's test procedure for CPSVs at 10 CFR 431.263 incorporates by reference ASTM F2324–13. The specific sections of ASTM F2324–13 that are applicable to the test method in 10 CFR 431.264 are the test methods for measuring flow rate at sections 6.1 through 6.9 (except 6.4 and 6.7), 9.1 through 9.4, and 10.1 through 10.2.5 of ASTM F2324–13. 10 CFR 431.264(b)(1). The DOE test procedure incorporates the corresponding calculations in section 11.3.1 of ASTM F2343–13. For the spray force test method, the DOE test procedure incorporates by reference sections 6.2, 6.4 through 6.9, 9.1 through 9.5.3.2, and 10.3.1 through 10.3.8 of ASTM F2324–13. 10 CFR 431.264(b)(2).

Since publication of the December 2015 Final Rule, ASTM F2324–13 has been reaffirmed as the industry test procedure ASTM F2324–13 (2019). The 2019 version contains no changes from the 2013 version. In the June 2020 RFI, DOE requested comment on updating the referenced industry standard to ASTM F2324–13 (2019) and confirmation that this change would not result in any changes to the DOE test procedure. 85 FR 34541, 34543. In response, PMI commented that it supports incorporating the reaffirmed industry standard. (PMI, No. 5 at p. 4) DOE did not receive any comments in opposition to this inquiry. In this NOPR, DOE proposes to update the CPSV test procedure to reference the reaffirmed industry standard, ASTM F2324–13 (2019).

DOE requests comments on its proposal to update the CPSV test procedure references to incorporate the reaffirmed industry standard ASTM F2324–13 (2019), and confirmation that such an update would not result in any substantive changes to the current test procedure.

C. Water Pressure

EPCA requires that any test procedures prescribed or amended by DOE be reasonably designed to produce test results which measure energy (and water) efficiency, energy (and water) use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) ASTM F2324–13 specifies testing with a water pressure of 60 ± 2 pounds per square inch (''psi'').[7] In the December 2015 Final Rule, DOE concluded that 60 psi is representative of the water pressures observed across the nation, based on review of water pressure data for commercial kitchens across the U.S. 80 FR 81441, 81446–81447.

In the June 2020 RFI, DOE requested comment or any data on whether the test pressure of 60 ± 2 psi continues to be representative of the average U.S. water pressures in commercial kitchen settings. 85 FR 34541, 34544.

CA IOUs and NEEA both commented that low water pressure is the leading cause of reduced user satisfaction and can lead to consumers seeking other products or retrofit alterations. (CA IOUs, No. 3 at p. 2; NEEA, No. 6 at p. 2) Citing that the range of pressures can vary, CA IOUs and NEEA recommended reducing the test pressure to 40 psi to ensure that CPSVs meet performance expectation for consumers with below-average water pressure. (CA IOUs, No. 3 at p. 1–3; NEEA, No. 6 at p. 2) CA IOUs stated that because flow rate increases with water pressure, if CPSVs can meet performance expectations at the lowest water pressure likely to be available in a building, then it is highly likely that the CPSV will also meet performance requirements at the higher water pressure. (CA IOUs, No. 3 at p. 2–3) CA IOUs and NEEA stated that lower water test pressure would ensure consumer utility, reduce user dissatisfaction, ensure higher retention rates of compliant CPSVs (and low-flow CPSVs), and prevent customers from seeking out higher flowrate valves instead. (CA IOUs, No. 3 at p. 1–3; NEEA, No. 6 at p. 2)

PMI commented that it believes the current test pressure of 60 ± 2 psi is representative and it is not aware of any data or market feedback that would warrant revising the current test pressure. (PMI, No. 5 at p. 4)

As an accompaniment to the December 2015 Final Rule, DOE provided a separate report titled ''Analysis of Water Pressure for Testing Commercial Prerinse Spray Valves Final Report,'' [8] in which DOE collected data from studies that reported operating

[7] The latest version of the industry standard, ASTM F2324–13 (2019), that DOE is proposing to incorporate by reference in this document also specifies testing with a water pressure at 60 ± 2 psi.

[8] The water pressure sensitivity analysis is available at *www.regulations.gov* under docket number EERE–2014–BT–TP–0055.

pressures and flow rates for typical CPSV applications to determine the representative water pressure for testing commercial prerinse spray valves. The report concluded that although the flow rate of CPSVs can vary by almost 40 percent when the water pressure changes from the analyzed range of 40 psi to 80 psi, the weighted average flow rate for CPSVs installed with varying supply pressures results in a 5-percent decrease in flow rate as compared to the flow rate of a CPSV installed with a water pressure of 60 psi. (Docket No. EERE–2014–BT–TP–0055–0008 at p. 4–5) Accordingly, DOE determined that 60 psi is sufficiently representative of the water pressures CPSVs will experience in the field. *Id.*

While CA IOUs and NEEA recommended updating the test pressure to 40 psi, neither provided any data to suggest 40 psi would be more representative of an average use than 60 psi. Rather, DOE understands that CA IOUs and NEEA recommended a change in test pressure to resolve concerns regarding consumer satisfaction and consumer utility primarily for low-flow CPSVs, especially at the lower end of the water pressure range. However, as noted previously, water pressure can vary based on the site of installation of CPSV. Testing a CPSV using a water pressure that represents the average of a range of typical water pressures provides a more representative result than testing at a single water pressure at one end of the range (*i.e.,* a lowest water pressure).

DOE did not receive any other comment or data suggesting a different test pressure than 60 psi that is more representative of an average use cycle. As discussed previously, the requirement in 10 CFR 431.264 to test at 60 ± 2 psi is based on ASTM F2324–13, which is an industry consensus standard. The ASTM industry-consensus process includes input from a wide variety of national stakeholders. For all the reasons DOE discussed in this section, DOE proposes to maintain the current test pressure of 60 ± 2 psi.

DOE requests additional data on water pressure for commercial kitchens across the U.S.

D. Test Procedures Costs, Harmonization and Other Topics

1. Test Procedure Cost and Impact

In this NOPR, DOE proposes to amend the existing test procedure for CPSVs by revising the definition of CPSV to clarify the scope and updating the existing references to the reaffirmed industry standard. DOE does not anticipate that the amendments proposed would impact test costs because DOE has tentatively determined that the proposed amendments would not be unduly burdensome for manufacturers to conduct and would not result in any additional cost.

DOE proposes to amend the CPSV definition by codifying in the CFR existing guidance on the application of the current definition. By codifying the guidance, manufacturers would have further certainty as to the application of the definition. This proposal would not change the scope of the definition.

Currently, DOE's test procedure for CPSVs at 10 CFR 431.263 incorporates by reference ASTM F2324–13. In this NOPR, DOE proposes to amend the existing test procedure for CPSVs by incorporating by reference the reaffirmed version of the industry standard, ASTM F2324–13 (2019). Incorporations of the reaffirmed industry standard would harmonize DOE's test procedures with the current industry practice.

DOE has tentatively determined that manufacturers would be able to rely on data generated under the current test procedure when certifying CPSVs to DOE should any of these additional proposed amendments be finalized.

DOE requests comment on its initial determination that manufacturers would not incur any additional testing costs solely due to the proposed amendments.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. 42 U.S.C. 6293(b)(3)–(4); 10 CFR 431.4 and sec. 8(c) of appendix A to subpart C of part 430. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards in order to adopt them as the DOE test procedure.[9]

The test procedures for CPSVs at 10 CFR 431.264 incorporates by reference ASTM F2324–13. DOE noted in the December 2015 Final Rule that there were some inconsistencies and sources of ambiguity in the industry standard and therefore adopted several clarifications of minor issues regarding the terminology used into DOE's test procedure at 10 CFR 431.264 to improve the repeatability and consistency of the test procedure. 80 FR 81441, 81447. DOE has not proposed any updates to the clarifying language that was adopted in the December 2015 Final Rule. The industry standard DOE proposes to incorporate by reference via amendments described in this document is discussed in further detail in section III.B. DOE requests comments on the benefits and burdens of the proposed update and existing additions to the industry standard referenced in the test procedure for CPSVs.

DOE notes that the reaffirmed industry standard does not make any changes to the previous industry standard. DOE is not aware of any other industry test procedures relevant to CPSVs.

E. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

If DOE were to publish an amended test procedure, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. *Id.*

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this test procedure rulemaking does not constitute a significant regulatory action under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation

[9] On April 12, 2021, DOE published a NOPR which proposed revisions to 10 CFR part 430 subpart C appendix A. 86 FR 18901.

of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc/office-general-counsel.*

DOE initially concludes that the impacts of the test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CPSVs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CPSVs. (See generally 10 CFR part 429) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The amendment proposed in this NOPR, if made final, would not impact the reporting burden for manufacturers of CPSVs.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CPSVs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, secs. A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal

agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *https://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of CPSVs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for CPSVs would incorporate testing methods contained in certain sections of the following commercial standards: ASTM F2324–13. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard published by ASTM International, titled ''Standard Test Method for Prerinse Spray Valves,'' ASTM F2324–13 (R2019). ASTM F2324–13 (R2019) is an industry-accepted test procedure that measures water flow rate and spray force for CPSVs and is applicable to product sold in North America. The test procedure proposed in this document references various sections of ASTM F2324–13 (R2019) that address test setup, instrumentation, test conduct, and calculations. ASTM F2324–13 (R2019) is available at ASTM's website at *www.astm.org/Standard/standards-and-publications.html.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=69&action=viewcurrent.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by email to: *CPSV2019TP0025@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submissions of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating

organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comments on the proposed definition of CPSVs.

(2) DOE requests comments on its proposal to update the CPSV test procedure references to incorporate the reaffirmed industry standard ASTM F2324–13 (2019), and confirmation that such an update would not result in any substantive changes to the current test procedure.

(3) DOE requests additional data on water pressure for commercial kitchens across the U.S.

(4) DOE requests comment on its initial determination that manufacturers would not incur any additional testing costs solely due to the proposed amendments.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on May 3, 2021 by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 4, 2021.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend part 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 431.262 is amended by revising the definition of ''Commercial prerinse spray valve'' to read as follows:

§ 431.262 Definitions.

* * * * *

Commercial prerinse spray valve means a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following:

(1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors);

(2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities);

(3) Actual sales.

* * * * *

■ 3. Section 431.263 is removed from under the undesignated center heading ''Test Procedures'' and revised to read as follows:

§ 431.263 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–1445, or email: *ApplianceStandards Questions@ee.doe.gov,* and may be obtained from the other sources in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) ASTM, International. 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585, or go to *www.astm.org.*

(1) ASTM Standard F2324–13 (R2019), (''ASTM F2324''),''Standard Test Method for Prerinse Spray Valves,'' Reapproved 2019; IBR approved for § 431.264.

(2) [Reserved]

■ 4. Section 431.264 is amended by revising paragraph (b) to read as follows:

§ 431.264 Uniform test method to measure flow rate and spray force of commercial prerinse spray valves.

* * * * *

(b) *Testing and calculations for a unit with a single spray setting.* (1) *Flow Rate.*

(i) Test each unit in accordance with the requirements of sections 6.1 through 6.9 (Apparatus) (except 6.4 and 6.7), 9.1 through 9.4 (Preparation of Apparatus), and 10.1 through 10.2.5 (Procedure) of ASTM F2324, (incorporated by reference, see § 431.263). Precatory language in ASTM F2324 is to be treated as mandatory for the purpose of testing. In section 9.1 of ASTM F2324, the

second instance of ''prerinse spray valve'' refers to the spring-style deck-mounted prerinse unit defined in section 6.8. In lieu of using manufacturer installation instructions or packaging, always connect the commercial prerinse spray valve to the flex tubing for testing. Normalize the weight of the water to calculate flow rate using Equation 1, where W_{water} is the weight normalized to a 1 minute time period, W_1 is the weight of the water in the carboy at the conclusion of the flow rate test, and t_1 is the total recorded time of the flow rate test.

$$W_{water} = W_1 \, x \, \frac{60 \, s}{t_1} \qquad \text{(Eq. 1)}$$

(ii) Perform calculations in accordance with section 11.3.1 (Calculation and Report). Record the water temperature (°F) and dynamic water pressure (psi) once at the start for each run of the test. Record the time (min), the normalized weight of water in the carboy (lb) and the resulting flow rate (gpm) once at the end of each run of the test. Record flow rate measurements of time (min) and weight (lb) at the resolutions of the test instrumentation. Perform three runs on each unit, as specified in section 10.2.5 of ASTM F2324, but disregard any references to Annex A1. Then, for each unit, calculate the mean of the three flow rate values determined from each run. Round the final value for flow rate to two decimal places and record that value.

(2) *Spray force.* Test each unit in accordance with the test requirements specified in sections 6.2 and 6.4 through 6.9 (Apparatus), 9.1 through 9.5.3.2 (Preparation of Apparatus), and 10.3.1 through 10.3.8 (Procedure) of ASTM F2324. In section 9.1 of ASTM F2324, the second instance of ''prerinse spray valve'' refers to the spring-style deck-mounted prerinse unit defined in section 6.8. In lieu of using manufacturer installation instructions or packaging, always connect the commercial prerinse spray valve to the flex tubing for testing. Record the water temperature (°F) and dynamic water pressure (psi) once at the start for each run of the test. In order to calculate the mean spray force value for the unit under test, there are two measurements per run and there are three runs per test. For each run of the test, record a minimum of two spray force measurements and calculate the mean of the measurements over the 15-second time period of stabilized flow during spray force testing. Record the time (min) once at the end of each run of the test. Record spray force measurements at the resolution of the test instrumentation. Conduct three runs on each unit, as specified in section 10.3.8 of ASTM F2324, but disregard any references to Annex A1. Ensure the unit has been stabilized separately during each run. Then for each unit, calculate and record the mean of the spray force values determined from each run. Round the final value for spray force to one decimal place.

* * * * *

[FR Doc. 2021–09708 Filed 5–19–21; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AC94

Collateral Evaluation Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes amendments updating our regulations on appraisal and evaluation requirements for property serving as collateral for loans made by the Farm Credit System (System). We propose reorganizing existing rules to remove redundancies and add clarity on the distinct valuation standards for each type of collateral. We also propose adding regulatory requirements for the use of automated valuation tools and releasing appraisal and evaluations to borrowers.

DATES: Comments on this proposed rule must be submitted on or before July 19, 2021.

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we do not accept comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* Kevin J. Kramp, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our website at *http://www.fca.gov.* Once you are in the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, but for technical reasons we may omit some items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Darius J. Hale, Senior Policy Analyst, or Dennis K. Carpenter, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056.

Legal information: Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Improve the organization and readability of FCA appraisal and evaluation regulations;
- Clarify expectations for internal controls in appraisal and evaluation practices;
- Expand authorities on using various sources of appraisers and evaluators as well as specifically authorizing use of automated valuation tools; and
- Update existing terminology and make other grammatical changes.

II. Background

The prevailing body of law for conducting collateral appraisals and evaluations in financial transactions is Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).[1] Title XI of FIRREA created the Appraisal Subcommittee within the Federal Financial Institutions Examination Council (FFIEC)[2] to provide federal oversight of state appraiser regulatory programs. Title XI of FIRREA also requires certain federally regulated lending institutions to use appraisers that are either state certified or state licensed under the Uniform Standards of Professional Appraisal Practice (USPAP).[3] USPAP provides standards and qualifications for real estate appraisers and provides guidance on recognized valuation methods and techniques for all evaluation professionals.

The Farm Credit Act of 1971, as amended (Act)[4] charges FCA with issuing regulations establishing loan security requirements and the manner of conducting collateral security reviews.[5] The Act requires System direct lenders to determine the value of loan security ''by appraisal under standards prescribed by the [institution] in accordance with [FCA] regulations.''[6] FCA is further tasked with examining the quality and sufficiency of collateral used to secure System loans.[7] Because these provisions within the Act existed before passage of FIRREA—and for other reasons—Congress exempted the System from Title XI of FIRREA, including following USPAP. However, FCA's present collateral evaluation rules are generally similar, although not identical, to FIRREA requirements.

In 1992, FCA issued subpart F of part 614, ''Collateral Evaluation Requirements'', which sets forth minimum regulatory standards for performing appraisals and evaluations of collateral securing extensions of credit (lending and leasing) by Farm Credit banks and associations.[8] The 1992 rulemaking applied many of the evaluation standards used by the banking industry under Title XI of FIRREA, including requiring the use of USPAP in certain loan transactions.[9] In deciding to use these standards where appropriate, FCA determined the underlying policy behind Title XI of FIRREA was relevant to the System's operations, particularly for ensuring that reports on collateral values accurately reflect the current market value of collateral at the time of a credit decision and that those values be recognized as valid within the financial sector. However, our regulations differ from Title XI of FIRREA and USPAP where needed to address the unique cooperative structure of the System and to address specific provisions in the Act. For example, Title XI of FIRREA provides that no USPAP appraisal is required for a loan secured by real estate when that loan is made based on cashflow and not the value of real estate collateral (*i.e.,* abundance of caution collateral). The System cannot use this exception for loans made under the authorities of Title I of the Act because those loans require a first lien on the real estate. Meaning those loans would never be made without consideration of the real estate collateral's value.

Collectively, subpart F of Part 614 has not been updated in over 25 years.[10] As System institutions move toward increased use of fee appraisers and technology in loan making, we believe it is time to update our requirements for collateral appraisals and evaluations. We also believe our regulations should be updated to reflect the increased importance internal review and controls play in today's lending environment. Internal controls are an integral part of managing lending programs. Internal controls are also necessary to protect safety and soundness operations where institutions engage in credit programs using minimum information or where institutions move away from the use of staff appraisers and evaluators.

III. Section-by-Section Analysis

We discuss the specifics of our proposal below in the same order as they would appear in the regulation.

A. Organization

We propose general language changes to subpart F of Part 614 to enhance readability. We intend no change in the meaning of the affected regulatory provisions unless specifically stated in the discussions of those provisions. We also propose reorganizing existing provisions to consolidate like items, remove redundancy, and add clarity.

1. Section Consolidations

Among these proposed organizational changes are:

- Consolidating into § 614.4250 the existing basic appraisal and evaluation policies and standards of §§ 614.4245(a) and 614.4250(a) and proposing revisions to these policies and standards.
- Revising and consolidating into § 614.4255 the existing appraiser and evaluator independence requirements of §§ 614.4255, 614.4260(e), and 614.4267.
- Merging the existing contents of § 614.4266(a) and (b) into § 614.4260, to address in one section the evaluation requirements for all chattel, including personal and intangible property, while also revising the existing provisions of § 614.4266.
- Revising § 614.4250 to add a discussion of internal controls for valuing collateral.
- Consolidating the existing appraisal and evaluation requirements of §§ 614.4260, 614.4265, and 614.4266 into §§ 614.4260 and 614.4265, as appropriate for the type of collateral under discussion.
- Adding a new § 614.4270 discussing the use of appraisal and evaluation tools, including computer-based models.
- Moving to new § 614.4275 the existing contents of § 614.4260(d) regarding our authority to require appraisals and evaluations and proposing clarifications.

2. Section Removals

We propose deleting as obsolete or redundant the exiting requirements of:

- §§ 614.4250(b) and 614.4245(b), (c), and (d);
- § 614.4260(a); and
- §§ 614.4265(g) and 614.4266(d).

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[1] Public Law 101—73, 103 Stat. 183, 12 U.S.C. 3331 *et seq.* (1989).

[2] The FFIEC was created in 1979 through Title X of Public Law 95–630 and is composed of representatives from the following federal financial regulators: Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, the Office of the Comptroller of the Currency, and Consumer Financial Protection Bureau. As the federal safety and soundness regulator of the System, the Farm Credit Administration is not a member of the FFIEC.

[3] Title XI of FIRREA also requires appraisals used in connection with certain real estate-related financial transactions entered into by financial institutions to be written and conform to the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation, as well as prescribes which categories of federally related transactions must have appraisals performed by a State certified appraiser and those where a State licensed appraiser may be used.

[4] Public Law 92–181, 85 Stat. 583.

[5] *See, for example,* sections 1.10(a)(3), 5.17(a)(6), and 5.17(a)(7) of the Act.

[6] *See, for example,* section 1.10(a)(3) of the Act (12 U.S.C. 2018(a)(3)).

[7] 12 U.S.C. 2252(a)(6) and (a)(7).

[8] 57 FR 54683, Nov. 20, 1992.

[9] FCA is not a FFIEC regulatory agency and therefore not required to follow FFIEC standards. However, we consider the policy positions of other regulators to decide if we should follow them or take a different approach if appropriate to implement the requirements and expectations of the Farm Credit Act of 1971, as amended.

[10] FCA regulation § 614.4265 on valuing real estate was modified in 2006 to increase the business loan exception allowing evaluations instead of USPAP-compliant appraisals for transactions under $1 million. 71 FR 65387, Nov. 8, 2006.

3. Section Headings

In keeping with proposed reorganizational changes, we propose renaming the subpart and its section headings as follows:

Subpart F—Collateral Appraisal and Evaluation Requirements

§ 614.4240 as ''Definitions'';
§ 614.4245 as ''General'';
§ 614.4250 as ''Policies, standards, and internal controls for valuing collateral'';
§ 614.4255 as ''Appraiser and evaluator qualifications and independence'';
§ 614.4260 as ''Valuing business chattel, personal, and intangible property'';
§ 614.4265 as ''Valuing real property'';
§ 614.4270 as ''Appraisal and evaluation tools''; and
§ 614.4275 as ''Reservation of authority''.

B. Definitions [Existing § 614.4240]

We propose general grammatical changes to certain terms in § 614.4240 to enhance readability. We intend no change in the meaning of the affected terms unless specifically stated. We also propose clarification, removal, or addition of certain terms as discussed below.

1. Clarifications

As a general matter, we propose adding introductory language explaining how certain terms (*e.g.,* paper, record, provide) may be interpreted to permit the electronic equivalent if allowed under our e-commerce regulations in part 609. We add this clarification to reduce questions on how technology adaptations in daily business activities are to be treated.

We propose clarifying changes to the following definitions:

a. ''Abundance of Caution''

We propose replacing the phrase ''real estate'' with ''asset'' when discussing an item taken out of an abundance of caution. We propose the change to recognize that not all collateral taken out of an abundance of caution is in the form of real estate. System lenders may hold collateral taken in an abundance of caution for real estate and non-real estate financial transactions. As a conforming change, we also propose replacing a reference to collateral required by regulations or the institution policies with a reference to assets legally required to secure the type of credit being extended. This change is intended to capture the variations in loan underwriting requirements, which allow for secured and unsecured lending in certain situations. However, the proposed clarification does not change legal requirements to take real estate as security for financing offered under Title I of the Act nor allow real estate taken as collateral for Title I lending to be considered an abundance of caution type of security.

b. ''Appraisal''

We propose clarifying that the term ''appraisal'' means USPAP compliant valuations of real estate completed by either a state licensed or state certified appraiser. We propose this change as part of our objective to clarify our regulations by restricting the term ''appraisal'' to always mean a USPAP compliant real estate valuation. The proposed change would prevent using the term to identify non-USPAP valuations, including values assigned to non-real estate. We caution readers that our regulatory definition of ''appraisal'' is not meant to define the term as used in the Act. Instead, we believe both regulatory terms of ''appraisal'' and ''evaluation'' represent the appropriate interpretation of how the single term ''appraisal'' is used in the Act.

c. ''Business Loan''

We propose adding cooperatives to the list of borrowing entities in recognition of lending authorities contained within Title III of the Act. In doing so, we propose changing the order of the list to aid in readability.

d. ''Evaluation''

We propose clarifying changes to the meaning of ''evaluation'' to explain an evaluation is in writing and presents an independent and impartial opinion of market value supported by relevant information. This clarification would remove the necessity of repeating throughout subpart F that evaluations need to be in writing and prepared by independent evaluators.

e. ''Evaluator''

We propose changing the existing term ''qualified evaluator'' to ''evaluator'', using the same definition but with slight modifications. The term as proposed would explain an evaluator must always be qualified for the evaluation assignment by being trained and experienced in identifying values for the types of assets under review. For purposes of business chattel, personal and intangible property collateral evaluations, the term would continue to include eligible bank or association staff, certified public accountants, equipment dealers, grain buyers, livestock buyers, auctioneers, and other industry experts.

f. ''Fee Appraiser or Fee Evaluator''

We propose clarifying the term to mean either an appraiser or evaluator of assets who is not employed by the System lender but acts as a third-party contractor. We make this change to further distinguish the term from appraisals or evaluations prepared by staff of the System lender. We also propose removing the last sentence of the existing definition that applies to personal and intangible evaluations. Instead, we propose moving that sentence to the term ''evaluator.'' In this definition we also propose conforming changes to use new or revised terms being proposed, such as replacing ''Farm Credit System institution'' with ''System lender.''

g. ''Highest and Best Use''

We propose clarifying changes to the term ''highest and best use'' to explain it means the legal use of the asset and to remove language that gives the impression the term only applies to real estate and not other collateral.

h. ''Personal Property''

We propose a clarifying change to the definition of ''personal property'' to exclude business chattel. As proposed, the term ''personal property'' would refer to moveable non-real estate property that is not in the form of equipment, livestock or crops. We propose the distinction to facilitate proper valuation of business chattel, which is commonly used as security for System financing, from other forms of chattel, such as household goods, which require different valuation efforts and resources. As a conforming change, we also propose adding a new definition for ''business chattel'', which is discussed in section III.B.3 of this preamble.

i. ''Real Estate or Real Property''

We propose adding ''or real property'' to the existing term ''real estate'' to recognize the interchangeable use of the two terms. We also propose clarifying that the term includes fixtures, easements, rights of way, and other rights commonly attached to the land (*e.g.,* mineral, water, gas, timber). We make this clarification to ensure appropriate identification and value adjustments for these items are part of the appraisals or evaluations of real estate. As a conforming change, we propose deleting the existing separate definition for the term ''real property.''

j. ''State Certified Appraiser''

We propose clarifying and conforming language to the definition of ''state certified appraiser'' that explains no person will be accepted as meeting the FCA definition unless that person passed a state-administered examination equivalent to those exams conducted under the jurisdiction of the FFIEC appraisal subcommittee. Currently, the definition makes a definitive statement of who is or is not a ''state certified appraiser.'' Because FCA does not actually certify any appraisers, we believe the clarification is necessary.

2. Removals and Relocations

First, we propose moving the terms ''cost approach'', ''income capitalization approach'', and ''sales comparison approach'' from the definitions contained in § 614.4240 and incorporating them into proposed § 614.4265, discussing real estate appraisals. This proposed movement should facilitate compliance with the requirements of real estate appraisals by keeping the definitions with the terms in the only place they are used within the rule.

Next, we propose deleting the term ''Appraisal Foundation'' because it is not used in the proposed rule text. We also propose removing the term ''valuation'' as the term has become a point of confusion. Currently, the term is defined as an evaluation that is not an appraisal. We propose removing this term and its definition, leaving only the terms ''evaluation'' and ''appraisal''. In conformance with this proposed change, we also propose revisions to the definitions of ''evaluation'' and ''appraisal'', drawing a distinction between the two types of reports. That proposed distinction would use the term ''appraisal'' only for USPAP compliance reports valuing real estate. All other reports of value, including those for business chattel, other personal property and intangible property, would be ''evaluations.''

3. Additions

We propose adding six terms that would apply to all of subpart F, unless otherwise stated in the regulations. First, we propose adding a definition for ''appraiser'' to limit application of the term to only those persons state-certified or state-licensed under USPAP guidelines. The term as proposed would also specify that an appraiser has demonstrated experience in identifying values for real property under USPAP. We add this term as part of our efforts to differentiate USPAP required values from evaluations of non-real estate.

Second, we propose adding a definition of ''automated valuation model'' or AVM, explaining it means a computer-based program that estimates a property's market value based on certain factors. As proposed, the definition would also explain certain sub-set models used for particular assets. We propose adding the term to make clear what constitutes an automated model, selecting a description closely aligned with the definition used by the FIRREA agencies. We chose to use a definition similar to FIRREA agencies in recognition that vendors of most AVMs design their models to comply with FIRREA standards.

Third, we propose adding a new definition for ''business chattel'' that would apply to property kept for the carrying on of any agricultural activity, such as production or use in the farming of land. We believe adding the definition will help eliminate confusion with other forms of chattel not in the form of equipment, livestock or crops (*i.e.,* household goods, personal property). We propose the distinction to facilitate proper valuation of business chattel separate from other chattel that may not be subject to a lienhold by the System lender. The new definition of ''business chattel'' would explain it also applies to both livestock (any creature not in the wild but regarded as an asset) used to produce food, wool, skins, fur or similar purposes, and crops (growing, harvested, or in storage) kept for production or use in the farming of land or the carrying on of any agricultural activity.

Next, we propose adding a definition for ''intangible property'' to clarify the term refers to valuable items that are not physical in nature (*i.e.,* copyrights, trademarks, goodwill, brand names, etc.). As discussed earlier, this proposed change would include a conforming change to the existing definition of ''personal property.''

Fifth, we propose adding a definition of ''Other Financing Institutions (OFI)'', using a definition consistent with that used in other regulations.[11] We propose specifically including the OFI definition to recognize the requirements of 12 CFR part 614, subpart P that OFIs comply with System underwriting standards, including collateral evaluation requirements.

Lastly, we propose adding a definition of ''System lender'', using a definition consistent with the existing collateral evaluation regulations explaining subpart J of 12 CFR part 614 applies to any System institution engaged in lending or leasing activities secured by collateral. This proposal would add greater readability to the rule through the use of one term rather than the existing use of several terms (identifying various types of System institutions) explaining who is responsible for obtaining an appraisal or evaluation of collateral used to secure an extension of credit. We believe our proposed use of the term ''System lender'' is in keeping with the appraisal requirements of the Act.

B. General [Proposed § 614.4245]

We propose § 614.4245 be an all-purpose section identifying the minimum expectations applicable to every collateral appraisal or evaluation. As part of the restructure, we propose moving existing § 614.4245(a) to another section and deleting, due to redundancy, the exiting requirements of § 614.4245(b), (c), and (d), along with other proposed changes.

1. Required Appraisals and Evaluations [Proposed § 614.4245(a)]

We propose adding as new § 614.4245(a) the general rule that all collateral must be valuated via an evaluation or appraisal. This is not a new requirement, but rather a clarification of FCA's long-standing position that collateral securing a loan must be assigned a value. FCA issued an Informational Memorandum containing this clarification in 2016 after our examination staff identified some institutions held the belief no valuation was required in certain credit transactions for certain types of collateral.[12] We recognize that non-real estate collateral may not always be a primary consideration or factor in determining creditworthiness. However, we believe that all security, including property taken out of an abundance of caution, should be properly valued. We also recognize failing to assign a market value to all collateral may negatively affect capital treatment, servicing decisions and loan classifications, as well as create borrower confusion if the property is later assigned the true market value because it has become essential to the credit. Therefore, FCA believes that whenever property is used to secure a loan, a market value must be assigned and supported by an appraisal or evaluation.

[11] ''OFI'' is defined elsewhere in our regulations to mean other financing institutions that have established an access relationship with a Farm Credit Bank or an agricultural credit bank under section 1.7(b)(1)(B) of the Act.

[12] FCA Informational Memorandum, ''Guidance on Addressing Personal and Intangible Property within Collateral Evaluation Policies and Procedures (§ 614.4245)'', dated August 29, 2016.

Also, we propose that, at a minimum, an appraisal or evaluation be obtained both when filing a lien against the property and when the lender expects to take liquidation actions. Ensuring an asset's value is the current market value at the identified times ensures credit decisions are using the best data available. As proposed, the rule would also require System lenders to act at other times to ensure existing values are adjusted when there are market fluctuations.

2. Format and Minimum Content Requirements [Proposed § 614.4245(b)]

We propose clarifying, reducing, and consolidating the existing minimum expectations for appraisals and evaluations into new § 614.4245(b). First, we propose adding a provision that explicitly requires appraisals to follow USPAP format requirements. Next, we propose adding language recognizing that an evaluation's format presentation will depend on the type of asset being valued and the tools and data sources used to set the value. For example, if equipment is being valued using an AVM, the evaluation format may be a computer screen shot of the recommended market value when that screen shows all the required information. Alternatively, the evaluation format may consist of several different documents with a cover synopsis. We propose this flexibility in recognition of the variety of data sources available and the different ways in which that data is obtained.

We are also proposing to establish minimum content requirements needed to support the final opinion of value. We propose using some existing content requirements and removing others in the process. The existing content provisions come from §§ 614.4245(a) and 614.4250(a). As part of this consolidation, we propose grammatical changes as well as a few additional changes. As proposed, new § 614.4245(b) would require that all appraisals and evaluations:

- Have enough details to describe the asset, including relevant characteristics;
- Provide information to aid the reader in ascertaining the reasonableness of the value; and
- Identify the data sources used for setting the value, such as including the name and version of any AVM or other published source data used.

When applicable, we also propose that the appraisal or evaluation include a statement that different appraisal or evaluation standards were used but use of those standards was not a result of any prohibited discriminatory factors.

We propose these requirements to provide the reader of the report with sufficient information as to how the appraiser or evaluator chose the final market value and to provide some assurance on the validity of the process used to reach a final value so that it is recognized by other lenders as a fair market value.

3. Age of Appraisal or Evaluation Reports [Proposed § 614.4245(c)]

We propose a new provision addressing when to obtain a new appraisal or evaluation (outside the two events proposed under § 614.4245(a)). We are not proposing specific evaluation or appraisal age requirements at this time. Instead, proposed § 614.4245(c) would respect the existing practice of allowing appraisals and evaluations to be updated pursuant to the System lender's policies. This would include updating benchmarking methodologies used to track and identify market conditions for a specific type of asset. However, we propose adding a requirement that an appraisal or evaluation may only be used if the reported value reflects market conditions at the time the value is used by the lender.

We had considered regulating the age of appraisals and evaluations but decided a fixed age may not capture market changes in an appropriate timeframe. Instead, we believe each System lender is in a better position to identify upward and downward movement in market conditions within its territory. For that reason, we maintain high expectations that each System lender will incorporate within its appraisal and evaluation policies and procedures timely reviews of collateral value.

4. Using the Appraisal of Another Lender [Proposed § 614.4245(d)]

We propose moving the existing provision regarding sharing fee appraisals among System institutions from § 614.4255(d) to § 614.4245(d). We also propose expanding this authority to cover all types of real estate appraisals when the applicant or borrower consents. The ability to share collateral appraisals and/or evaluations for the sale and purchase of loans under subpart H of part 614 is unaffected by this proposal as System lenders are expected to address the sharing of collateral appraisals and/or evaluations in those transactions through their purchase of interests in loan agreements under § 614.4325(c)(3), as appropriate and necessary to satisfy underwriting criteria.

As proposed, a System lender may use the real estate appraisals of other lenders when the lender obtaining the appraisal will not be extending the requested credit and agrees to transfer the appraisal. FCA believes that it would be beneficial to System institutions and serve as a cost-savings measure for applicant to allow sharing appraisals among System lenders when one or more are involved in a credit transaction. To preserve the quality of the transferred appraisal, we propose retaining the existing requirement that such transfers may only occur with other System lenders or lenders subject to Title XI of FIRREA. Additionally, we propose that the System lender receiving the transferred appraisal assume responsibility for verifying the accuracy of the appraisal.

5. Releasing Appraisal or Evaluations [Proposed § 614.4245(e)]

We propose adding a provision on the release of appraisals and evaluations to applicants and borrowers. We are proposing this provision to further implement the requirements of section 4.13A of the Act, which provides that borrowers have the right to obtain reports valuing their assets anytime during the life of the loan. Specifically, borrowers must be given, when requested, ''copies of each appraisal of the borrower's assets made or used by the qualified lender.'' [13] Additionally, we propose language specifying that a System lender is to release a copy of the collateral appraisal or evaluation to the applicant or borrower when issuing an adverse credit decision that relies in whole or part upon collateral values. This provision would align with provisions in Part 617 and our guidance regarding the contents of adverse credit decisions.

As proposed, appropriate duplication fees may be charged when more than one copy is given, excepting those copies included with notice of an adverse credit decision. We also propose that System lenders provide a copy of a collateral appraisal or evaluation within 7 days of the request. We are proposing a fixed time to ensure that applicants and borrowers receive the report within a reasonable time. We propose 7 calendar days in consideration of other regulatory timeframes where the asset's value may affect an applicant's or borrower's decision making or review rights.

In coordination with our proposed language on evaluation presentation format (§ 614.4245(b)), we propose that the appraisal or evaluation copies

[13] 12 U.S.C. 2200.

provided to applicants and borrowers contain all the information required by regulation or USPAP. These copies serve an essential role in an applicant's or borrower's decision on whether to challenge the value assigned an asset before the Credit Review Committee (CRC). Ensuring the applicant or borrower receives the relevant information forming the appraisal or evaluation will also fulfill Congressional intent behind section 4.13A. Additionally, we believe that the information provided in the documentation should be presented in a manner that is easily understood by the applicant or borrower.

6. Recordkeeping [Proposed § 614.4245(f)]

We propose adding a requirement on the amount of time System lenders are required to maintain appraisal and evaluation reports. As proposed, a lender's general recordkeeping policies would apply to appraisals and evaluations, except the lender would be required, at a minimum, to maintain them for the same duration as the related credit file. We also specifically propose that the lender preserve the data set used in establishing the value in effect as of the date of the appraisal or evaluation. Our proposal is intended to ensure that the appraisals and evaluations used in the credit process are preserved in case questions arise about the credit decision that may lead back to asset values and to inform whether any updated value is required. Additionally, the proposed requirement to retain the data source(s) used for an appraisal or evaluation reconciles this provision with proposed § 614.4245(e). Under new § 614.4245(e) we propose requirements addressing the statutory authority of a borrower to request, at any time during the borrowing relationship, copies of all appraisals and/or evaluations used by the System lender.

C. Policies, Standards, and Internal Controls [Proposed § 614.4250]

We propose consolidating into § 614.4250 the existing requirement that System lenders develop policies and standards for conducting appraisals and evaluations. The current requirements are located in §§ 614.4245(a) and 614.4250(a). As part of this consolidation, we propose additional requirements and conforming changes.

1. Policies [Proposed § 614.4250(a)]

As proposed, § 614.4250(a) would contain the existing requirement that System lenders adopt and maintain written policies on when and how to issue collateral appraisals or evaluations. The rule further proposes required minimum contents for the policies, including:

- Addressing when an evaluation instead of an appraisal will be used (where the regulations allow a choice);
- Establishing the frequency and timing of when to complete either an appraisal or evaluation;
- Monitoring market conditions;
- Authorizing or prohibiting the use of shared appraisals or using out-of-territory fee appraisers and evaluators;
- Setting parameters for using AVMs and other tools;
- Verifying the independence of those performing the valuation functions;
- Prohibiting any practice that would base an appraisal or evaluation on a requested minimum value or loan amount; and
- Outlining internal controls needed to ensure compliance with relevant laws and regulations.

We believe these minimum requirements provide the basic foundation for a good appraisal and evaluation policy.

Further, we propose requiring Farm Credit banks to address within their collateral appraisal and evaluation policies OFI compliance with those policies. Elsewhere in our regulations, OFI lending activities that are discounted with a Farm Credit bank are required to follow relevant policies and procedures contained in subpart P of 12 CFR 614. We believe specifically addressing OFIs in the collateral regulations and related institution policies will facilitate compliance with those regulations.

2. Standards [Proposed § 614.4250(b)]

We propose § 614.4250(b) contain the existing requirement of § 614.4250(a) that System lenders adopt and maintain written standards for appraisals and evaluations. In addition, we propose requiring those standards be designed to represent current market values to protect the lender's interest in maintaining adequate loan collateral. The rule would continue to identify minimum items the standards must address, including support for the identified market value, the selection process for appraisers and evaluators, continuous monitoring of market conditions, and addressing inspections of the subject property. The level of information each System lender requires within these standards is expected to be specific to the type and nature of the collateral securing the loan. A System lender might also include addressing what it considers appropriate evaluation techniques for complex and specialized assets or high-risk transactions. When valuing complex and specialized assets, additional information addressing the unique characteristics and conditions affecting the market value of such assets demands providing more than the minimums proposed to ensure a reader of the evaluation receives sufficient information on how the value was established. We believe the System lender is in the best position to determine the level of this additional information given territorial considerations.

When considering how and in what manner to conduct property inspections, we expect the lender to include controls addressing the accuracy and integrity of the inspections. We are aware industry practices continue to place increased reliance on various types of technology to enhance or replace the physical inspection process. When other methods such as these are used, additional controls may be necessary to validate the data's accuracy. While we have not proposed prohibiting the use of such technology, we continue to believe physical inspections are the most appropriate method to verify assets in most cases.

3. Internal Controls [Proposed § 614.4250(c)]

We are proposing § 614.4250(c) address internal controls in managing the collateral appraisal and evaluation process. We propose that each lender have written internal control policies and procedures specifically designed for the collateral appraisal and evaluation process. We believe the internal controls process for collateral valuations should be designed to protect the integrity of those values and the process by which they are determined. We propose requiring the controls include safeguarding the independence of those setting values from the credit process, verifying the condition of the asset being valued, and recognizing and reacting to changes in market conditions.

We recognize that existing § 618.8430 contains general requirements for internal controls in collateral valuations and other processes, but we believe there is a need for greater clarity on what the internal controls for collateral valuations should contain. We are not proposing any changes to § 618.8430 and do not intend for the proposed § 614.4250(c) to replace or supersede it. Instead, we intend proposed § 614.4250(c) as an elaboration on the requirements of § 618.8430. As such, we encourage commenters to advise us if

they read any conflict between the two provisions.

D. Appraiser and Evaluator Qualifications and Independence [Proposed § 614.4255]

We propose consolidating into new § 614.4255 the existing appraiser and evaluator independence standards from §§ 614.4255 and 614.4267. We also propose that System lenders verify an appraiser's or evaluator's competency to value the type of collateral under review. In addition, we propose several clarifying changes to existing conflict of interest prohibitions for a lender's staff. As proposed, § 614.4255(b) would require lenders to establish written standards setting forth how independence from the credit decision will be determined. We had considered removing the ability of a single person to both establish the collateral value and make the related credit decision. However, we are mindful there are smaller associations or service offices where complete separation may not be possible. Also, we took into consideration the use of automated credit approval processes. As a result, we are not proposing to remove the current regulatory authority allowing one person to perform the valuation and credit function. However, we propose that those System lenders choosing to embrace such a practice implement a secondary review. We are proposing in § 614.4255 (b) that a secondary review occur either before credit approval or soon after loan closing. We believe System institutions already have the policies and procedures in place to address this requirement. Additionally, we propose in § 614.4255(b)(3) and (4) that a review of that person's work be conducted by someone separate from the credit transaction and the CRC. We also propose clarifying language that the CRC may not be treated as a secondary review source. Notwithstanding this proposed provision, all aspects of the proposed § 614.4255(b) would remain applicable to System lenders allowing a single person to both establish the collateral value and make the related credit decision.

Finally, we propose moving existing prohibitions on who may perform collateral appraisals and evaluations to new § 614.4255(c). We also propose clarifying that the existing prohibition against a fee appraiser or fee evaluator having a financial interest in the loan or subject property does not include fees earned for valuation services. In addition, we propose expanding the existing prohibition against directors, officers and employees of the System lender performing real estate appraisals and/or evaluations to include all assets where that person has a direct financial interest in the asset being valued. We do not propose extending this prohibition to those appraisals or evaluations prepared by the lender's staff where the staff is engaged in marketing, lending, collection, or credit decision process, but holds no financial interest in the asset and the appraisal or evaluation is subject to the aforementioned secondary review.

We propose new language in paragraph(c)(6) to prohibit directors, officers and employees of the System lender from serving on the CRC when that same director, officer or employee performed an appraisal or evaluation that is under review by the CRC. To ensure continued independence in the valuation process, we believe it is important to restrict those performing the appraisal or evaluation from serving on the CRC when a credit decision involving the appraisal or evaluation prepared by that person is under review by the CRC.

E. Valuing Business Chattel, Personal, and Intangible Property [Proposed § 614.4260]

We propose renumbering existing § 614.4266 as new § 614.4260 and keeping the existing requirements of § 614.4266 that chattels are valued using market-values and contain detailed descriptions of the chattel as well as identify the source(s) used to set the value. We also propose providing a nonexclusive list of acceptable sources. Additionally, we propose adding language to make clear that evaluations of business chattel, personal and intangible properties must use recognized techniques and sources when deriving the final value. We believe limiting the manner of identifying values to recognized techniques and sources helps ensure the accuracy of assigned values, which in turn strengthens the soundness of the related credit decision. It also furthers the likelihood of those evaluations being recognized as valid market values within the financial sector. As a conforming change, we propose adding language to reference the proposed regulatory sections on minimum content, borrower access, and record-keeping for chattel evaluations. However, for intangible property, we propose keeping, with slight modification, the existing requirements from §§ 614.4250(a)(6) and 614.4266(c) that evaluations of intangible property include discussion of the asset's marketability.

In developing this proposed rule, we considered proposing a ''score card'' exemption or, in the alternative, a reduced analysis for chattel taken out of an abundance of caution. Ultimately, we concluded that Congress expected all forms of chattel to be valued when making a loan. Within the Act, Congress established certain loan making actions to ensure safe and sound credit decisions and provided legal rights for borrowers regarding collateral. To satisfy these congressional requirements and expectations, all collateral needs a substantiated value. This is true particularly when an applicant seeks to challenge the value through the CRC process.[14] Even though we have not proposed any exemptions or offered special provisions for chattel taken out of an abundance of caution, we believe our proposal to allow the expanded use of AVM and other source data procedures and our proposed changes in documentation required for chattel evaluations serve to address the majority of concerns expressed on the interaction of chattel evaluations and automated loan processes.

F. Valuing Real Property [Proposed § 614.4265]

We propose revising the current requirements of § 614.4265 by consolidating like provisions currently located in § 614.4260, reorganizing and clarifying content, and adding some additional requirements.

1. General [§ 614.4265(a) and (b)]

We propose clarifying in § 614.4265(a) that all real estate collateral must be appraised unless an evaluation is specifically permitted by new § 614.4265(c). We propose moving to new § 614.4265(b) the existing requirement of § 614.4260(b)(2) that if a real estate-related financial transaction is over $1 million dollars, then only a state certified appraiser may issue the appraisal report for the real estate security. We also propose removing the existing § 614.4260(b)(1) requirement that appraisals for transactions over $250,000 be completed by state-licensed or state-certified appraiser. Our other proposed changes, such as to the definition of ''appraisal,'' remove the need for this provision.

2. Permitted Use of Real Estate Evaluations [Existing § 614.4260(c); Proposed § 614.4265(c)]

We propose moving to new § 614.4265(c) the existing exceptions in § 614.4260(c) for when an evaluation of

[14] Section 4.14 of the Act provides that applicants and borrowers may obtain a review of appraisals and evaluations used in the loan making or loan servicing decision by obtaining an independent evaluation and presenting it to the CRC.

real estate may be used instead of an appraisal. We also propose adding clarifications to their use because over the years we have had to issue guidance and address questions on the meaning and applicability of the regulatory exceptions. We intend no change to the original scope of the exceptions unless otherwise provided for in the regulation and as explained in this preamble. Specifically, we are proposing to keep the existing authorization to issue an evaluation, not an appraisal, for real estate collateral in the following loan transactions when use of an exception is justified.

a. Transactions Valued at or Below $250,000

We propose moving the existing exception in § 614.4260(c)(1) for transactions that do not include a business loan and which are valued at or below $250,000 to new § 614.4265(c)(1) and naming it ''non-business loan transactions''.

b. Business Loan Transactions

We propose moving the existing exception in § 614.4260(c)(2) for transactions that are business loans valued at or below $1 million to new § 614.4265(c)(2) and naming it ''business loan transactions''. Those persons eligible for the business loan exception include individuals, corporations, sole proprietorships, *et al.* that meet the eligibility requirements of FCA regulations §§ 613.3000(b), 613.3010, and 613.3020.

Additionally, we clarify that we propose no change to this exemption being used for first-lien real estate taken under 12 U.S.C. 2018(a). The value of this first-lien security is used to establish the Loan-to-Value lending ratio (LTV) and so the Act requires it to be ''appraised'' because Congress intended values used in the LTV be strong and supportable. When developing the existing rule in 1992, we set in § 614.4265 the minimum requirement that all real estate evaluations determine market value after analyzing the property's value under three approaches: Income capitalization, sales comparison, and cost. This was to afford System lenders use of the FIRREA business loan transaction exemption for first-lien real estate taken under 12 U.S.C. 2018(a) while also satisfying the requirements of the Act. For that reason, in this rulemaking we propose no changes to allowing use of the business loan transaction exemption for first lien real estate taken under 12 U.S.C. 2018(a). In coordination with this, we propose no change in the requirement to use three approaches when either appraising or evaluating real estate, as discussed in the following preamble section III.F.3., ''Determining value.''

We are proposing changes to one of the conditions for using the business loan exception. Currently, our regulations state that the repayment of the business loan cannot be dependent on income derived from the sale or cash rental of real estate as the primary source of repayment if using the exception. We are proposing to relax this limitation by restricting it to repayment coming from cash rental from nonagricultural operations. That is, we propose allowing business loan transactions at or below $1 million to use evaluations when repayment of the loan is from rental income derived from agricultural sources. We believe renting land for agricultural purposes should not prevent use of this exception. Farmers or ranchers who receive cash rents from production on agricultural land should not have to bear the cost of an appraisal solely because the repayment of their loan is from cash rents off that land. This includes those farmers or ranchers who have set aside land and receive conservation payments from a federal or state program.

c. Subsequent Loan Transactions

We propose moving the existing exception in § 614.4260(c)(5) for subsequent transactions that do not involve new collateral or new monies to new § 614.4265(c)(3) and naming it ''subsequent loan transactions''. We propose clarifying changes to the existing language, but propose no material change to this exception.

d. Pooled Loan Transactions

We propose moving the existing exception in § 614.4260(c)(6) for loan transactions where a System lender purchases an interest in a loan or pool of loans to new § 614.4265(c)(4) and naming it ''purchased loans''. We propose clarifying changes to existing language, but propose no material change to this exception.

e. Guaranteed Loan Transactions

We propose moving the existing exception in § 614.4260(c)(7) for loan transactions involving a U.S. Government guarantee to new § 614.4265(c)(5) and naming it ''U.S. Government guarantee''. We propose clarifying changes to existing language, but propose no material change to this exception. Specifically, we propose clarifying the exception's applicability by converting the existing single sentence into two separate sentences: One for purchased loans already having a guarantee and one for when the lender is making the loan with a guarantee. We believe this clarification will facilitate use of the exception.

f. Additional Security in a Loan Transaction

We propose moving and consolidating the existing exceptions in § 614.4260(c)(3) and (c)(4) for loan transactions involving real property that is either not required by law or is taken for a purpose other than the land's value to new § 614.4265(c)(6), ''Additional security''. As proposed, an evaluation process would be available for real estate taken under an abundance of caution. We believe this proposed change captures the intent of the existing exceptions but presents them in a simpler manner.

We considered adding a commercial real estate transaction exception in response to an exception of this nature being added by those regulators subject to FIRREA. The commercial real estate transaction exception recently authorized by other regulators, such as the Federal Deposit Insurance Corporation, provides that a commercial loan using real estate security, but not involving a single 1-to-4 family residence,[15] may use an evaluation instead of an appraisal for the real estate when the loan transaction is at or below $500,000. The unique nature of the System would have made the exception of little value. Farm Credit direct lenders are non-depository institutions who primarily make commercial business loans to the agricultural sector. These System lenders have authority to make owner-occupied home loans in rural areas populated by 2,500 persons or less, but these home loans may not make up more than 15 percent of the institution's loan portfolio. Further, a loan made to finance one of these homes would not be a business loan or a commercial transaction, so would be ineligible for a commercial real estate transaction exception. Additionally, System institutions may make the occasional consumer loan as part of an agricultural operation's 'other credit needs' and these loans would also not qualify for a commercial real estate transaction exception because they too would be consumer transactions. However, System institutions may finance certain commercial transactions under the same 'other credit needs' authority and, if no residence were

[15] A single 1 to 4 family residence is generally considered to be a single-family home, a duplex, a tri-plex or a four-plex. It generally does not include farm or ranch properties that have a residence on the farm or ranch-site unless the entire property is primarily residential.

involved, these loans might qualify for a commercial real estate transaction exception. In evaluating the volume of loan transactions such an exception would cover and considering the fact that these loans would mainly be commercial transactions so most would already be eligible under the ''business loan'' exception (if the loan transaction is $1 million or less), we did not see the value in adding an additional exemption.

3. Determining Value [Proposed § 614.4265(d)]

We propose consolidating in new § 614.4265(d) the existing requirements of §§ 614.4250(a)(6) and 614.4265. We also propose moving from the existing definitions those explanations for the ''cost approach'', ''income capitalization approach'', and ''sales comparison approach'', incorporating them into new § 614.4265(d).

As proposed, new § 614.4265(d) would continue to require real estate be valued on the basis of market value but would add clarification of how to arrive at a market value. We propose clarifying that market value is identified only after considering the three valuation methods: Income capitalization, sales comparison, and cost approach. We propose this clarification in part through relocating the existing definitions for ''cost approach'', ''income capitalization approach'', and ''sales comparison approach'' to new paragraph (d)(1) through (3). We further propose clarifying that arriving at a market value includes identification of nonagricultural influences, as is currently required in existing § 614.4265(f). Also, we propose requiring in all cases that real estate appraisals and evaluations contain detailed documentation of the best approach to value as part of the written report. We propose that details of the other approaches only be required when primarily used to identify the market value. We propose these modifications to provide better clarity as to why an appraiser or evaluator may not have chosen to use a specific valuation approach. It also increases transparency and allows the user to better understand the logic behind the final market value.

In proposed new paragraph (d)(1), the income capitalization approach would be explained using the current definition of such. Similarly, proposed new paragraph (d)(2) would contain expectations for the sales comparison approach, using the current definition and adding new requirements for using at least three comparable sales, unless the appraiser or evaluator provides documentation that such comparable sales are not available. FCA believes that requiring appraisals and evaluations to contain at least three comparable properties provides adequate information to form an opinion on the market value of the property in question. Additionally, three comparable sales would provide the end user with an adequate range of values for the subject property for comparison purposes.

Lastly, proposed new paragraph (d)(3) would contain expectations for the cost approach by using the current definition and adding a documentation requirement when the property has unique improvements. FCA believes adding the documentation requirement would allow end users to better understand the methodology chosen to derive the final recommended market value of the subject property. Additionally, we believe the documentation would provide greater transparency to the end user regarding the improvements on the property.

4. Valuation of Fixtures [Proposed § 614.4265(e)]

Proposed § 614.4265(e) would retain the existing requirement that real estate fixtures be included in the value of real estate. As proposed, greater specificity would be added to clarify that buildings capable of being used for income-producing purposes related to agriculture must have an assigned value. However, we propose language preserving the discretion of the appraiser or evaluator to assign certain obsolete buildings no value. In the past, questions have arisen on whether such buildings should be assigned even a salvage value. Since appraisers and evaluators are trained in assessing market demands, we believe they need to retain the final authority on what value is given obsolete fixtures. To ensure the fixtures are not prematurely determined obsolete, we also propose that the value assigned be premised upon the average buyer. We believe this will alleviate potential disputes among the owner, the lender, the examiner, and the appraiser/evaluator on whether the building is obsolete or retains some contributory value in each individual's opinion.

5. Additional Content Requirements [Proposed § 614.4265(f)]

We propose keeping, with slight modification, the existing requirements from §§ 614.4250(a)(6) that real property appraisals and evaluations include discussion of the land's marketability. We also propose requiring that appraisals and evaluations of real property include certain information in addition to the general contents proposed in new § 614.4245(b). Specifically, we propose that the appraisal or evaluation include a description of any permanent fixtures, known water or mineral rights, and recorded access rights associated with the land being valued. In recent years, we have had several situations arise where these items were not properly noted, resulting in disputes when the lender later went to act on its lien or there was a land transfer matter. We believe having an appraisal or evaluation notate known permanent fixtures, water or mineral rights, and recorded access rights will further aid lenders in verifying the information against title reports. We also propose keeping the existing requirement that an appraisal or evaluation name the purpose(s) for which the property will be used by the applicant or borrower when that purpose will be different from the land's highest and best use.

Next, we propose that an appraisal or evaluation of real property name readily observable conditions on the subject property that may pose an environmental hazard. As proposed, System lenders would have to inform the appraiser or evaluator of any reported or known potential hazards. FCA believes the identification of known hazards on the subject property provides valuable information in formalizing the valuation of the property.

Finally, we propose requiring System lenders provide appraisers and evaluators Federal Emergency Management Agency (FEMA) forms prepared on the subject property. Specifically, when the property includes items listed in a Special Flood Hazard Area, the lender would have to supply to the appraiser or evaluator the FEMA form showing the location of the buildings. We propose this provision to align our appraisal and evaluation rules with our existing flood insurance rule of § 614.4940.

G. Computer-Based Models and Other Tools [Proposed § 614.4270]

We propose adding a new § 614.4270 discussing the use of certain appraisal and evaluation tools. FCA previously issued Informational Memoranda addressing the use of automated analytical tools in assigning values to collateral [16] and we propose incorporating most of that guidance into this new regulatory section.

[16] *Referring to* ORP–IM, ''Collateral Evaluation Requirements and Frequently Asked Questions'', dated April 21, 2008 and OE–IM, ''Computer-Based Model Validation Expectations'', dated June 17, 2002.

Specifically, we propose allowing System institutions to establish computer-based analytical methods and technological tools for collateral appraisal and evaluations, provided the lender can demonstrate that the method(s) used to establish a value is consistent with safe and sound lending practices and contains sufficient information and analysis to provide a market value conclusion. As proposed, analysis tools may not be used as a standalone appraisal or evaluation because these tools are intended for use in assisting appraisers and evaluators in the collateral evaluation process, not replacing them. For example, computer-based models may be used if there is sufficient data available for the type of property being evaluated and if the lender has the necessary expertise to interpret the data.

We propose that use of automated valuation models (AVM) be limited to situations where the AVM uses information specific to the subject property, including the actual physical condition of the subject property, rather than generalized 'assumptions.' As proposed, assumptions used by the evaluator will require sufficient support and the evaluator will have to demonstrate that the 'assumption' is appropriate for the subject property. Appropriate due diligence is also essential when using these models, including conducting independent reviews to ensure institutions' boards of directors and senior managers are receiving clear and informative descriptions of the model's assumptions and limitations. As such, we propose that System lenders perform due diligence through an independent validation process. We also propose that System lenders retain staff or contract with persons who have experience in using the AVM chosen by the System lender. FCA believes that lenders who maintain staff with AVM expertise would be better positioned to respond to questions or concerns from the output of the AVM or in the event the AVM does not perform as anticipated.

We further propose allowing the use of tax assessment values (TAV) when there is additional support to show a valid correlation between the TAV and market value but would limit TAV use to valuing real estate. As proposed, the lender would be required to document how the TAV is developed and updated by the tax authorities. We also propose using the TAV only in a manner consistent with safe and sound lending practices, which would involve using additional support for final recommended values rather than sole reliance upon the TAV. We are not proposing to allow use of TAVs for chattel and personal property. We are aware some states assess and tax chattel and personal property, but we do not believe those valuations processes are refined enough to use in credit decisions. As we understand them, chattel valuation processes vary widely by state, not all states provide such valuations, and the values do not consider any additional features or the actual condition of the chattel.

Additionally, we propose requiring System lenders using these tools have policies and procedures in place that, among other things, include appropriate internal controls. In new § 614.4270(c) we propose minimum control requirements that the policies and procedures must address. These requirements include ensuring staff training and expertise, validating model results and setting criteria when the models will be used and to what extent. We believe the proposed minimum internal control requirements are common industry practice and provide a sound basis for System institutions to develop additional institution-specific requirements.

H. Reservation of Authority [Proposed § 614.4275]

We propose moving to new § 614.4275 the existing contents of § 614.4260(d) regarding our authority to require appraisals and evaluations. We also propose clarifying that our collateral evaluation regulations do not prevent exercising this authority when safety and soundness issues or enforcement actions require it.

V. Regulatory Flexibility Act and Congressional Review Act Conclusions

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, the Farm Credit Administration proposes to amend part 614 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 614—DISCLOSURE TO SHAREHOLDERS

■ 1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639 (12 U.S.C. 2121 note).

■ 2. Revise the heading of subpart F to read as follows:

Subpart F—Appraisal and Evaluation Requirements

■ 3. Subpart F, consisting of §§ 614.4240 through 614.4275, is revised to read as follows:

Subpart F—Appraisal and Evaluation Requirements

Sec.

614.4240 Definitions.
614.4245 General.
614.4250 Policies, standards, and internal controls for valuing collateral.
614.4255 Appraiser and evaluator qualifications and independence.
614.4260 Valuing business chattel, personal, and intangible property.
614.4265 Valuing real property.
614.4270 Appraisal and evaluation tools.
614.4275 Reservation of authority.

§ 614.4240 Definitions.

For the purposes of this subpart, the following definitions apply excepting that terms such as copy, document, file, record, provide, written, and similar words generally should be interpreted to permit electronic transmissions and communications as allowable under 12 CFR part 609:

Abundance of caution means a decision to require an asset as security for a loan when the asset is not used as a basis for extending credit, a prudent lender would extend credit without the asset, and the asset is not legally required as security for the type of credit being extended.

Appraisal means a USPAP compliant written evaluation prepared and issued by a state licensed or state certified appraiser setting forth an independent and impartial opinion as to the market value of real estate as of a specific date(s), which value is supported by the presentation and analysis of relevant market information.

Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Appraiser means a state-certified or state-licensed appraiser who is competent, reputable, impartial, and has demonstrated sufficient training and experience in identifying values for real property through issuance of USPAP compliant reports.

Automated Valuation Model or AVM means a computer program that estimates a property's market value based on market, economic, and demographic factors using a quantitative method, system, or approach applying statistical, economic, financial, or mathematical theories, techniques, and assumptions. *Hedonic* models generally use property characteristics (such as square footage and room count) and methodologies to process information, often based on statistical regression. *Index* models generally use geographic repeat sales data over time rather than property characteristic data. *Blended* or *hybrid* models use elements of both hedonic and index models.

Business chattel means livestock (*e.g.* any creature not in the wild which is regarded as an asset such as those to produce food, wool, skins, fur or similar purposes) and crops (growing, harvested, or in storage) kept for production or use in the farming of land or the carrying on of any agricultural activity. The term also encompasses equipment used in business operations, including agricultural equipment.

Business loan means a loan or other extension of credit to finance the business activities of an individual, sole proprietorship, general or limited partnership, joint venture, cooperative, corporation, business trust, or other legal business entity (including those engaged in farming enterprises).

Evaluation means an independent and impartial written opinion of market value for an identified interest in, or aspects of, an asset, which value is supported by the presentation and analysis of relevant market information.

Evaluator means an individual who is competent, reputable, impartial, and has demonstrated sufficient training and experience in identifying values for assets. For purposes of business chattel, personal, and intangible collateral evaluations, the term may include, but is not limited to, System lender staff, certified public accountants, equipment dealers, grain buyers, livestock buyers, and auctioneers.

Fee appraiser or fee evaluator means a qualified appraiser or evaluator of assets who is not an employee of the party contracting for the completion of the appraisal or evaluation and who performs an appraisal or evaluation on a fee basis. For purposes of this subpart, a fee appraiser or fee evaluator may include staff from another System lender only if the employing lender is not operating under joint management with the contracting System lender.

FIRREA means the Financial Institutions Recovery, Reform, and Enforcement Act of 1989.

Highest and best use means the reasonable and most probable legal use of the asset as of the date of valuation that is physically possible, appropriately supported, financially feasible, and results in the highest value.

Intangible property means an item of worth that is not physical in nature, including, but not limited to, a copyright, trademark, goodwill, easement, lease, corporate logo or brand name.

Market value means the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming neither is under duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Other Financing Institutions or OFI means the entities described in 12 U.S.C. 2015(b)(1)(B), but only with respect to loans discounted or pledged under 12 U.S.C. 2015.

Personal property means all tangible and movable property not considered real property and its fixtures or business chattel.

Real estate or real property means an identified parcel or tract of land, including fixtures, easements, rights of way, improvements, if any, and associated mineral, oil, gas, timber, or water rights attached to the parcel or tract of land.

Real estate-related financial transaction means any transaction involving:

(1) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

State certified appraiser means any individual who has satisfied the requirements for and has been certified as an appraiser by a State or territory whose requirements for certification currently meet or exceed the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual will be accepted under these regulations as a State certified appraiser who has not achieved a passing grade on a state-administered examination that is consistent with, and equivalent to, the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

State licensed appraiser means any individual who has satisfied the requirements for licensing and has been licensed as an appraiser by a State or territory in which the licensing procedures comply with title XI of FIRREA and in which the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

System lender means a chartered Farm Credit System institution that engages in lending or leasing secured by collateral.

Transaction value means:

(1) For loans or other extensions of credit, the amount of the loan, loan commitment, or other extensions of credit;

(2) For sales, leases, purchases, investments in, or exchanges of real property, the market value of the property interest involved; and

(3) For the pools of loans or interests in real property, the transaction value of the individual loans or the market value of the real property interests comprising the pool.

USPAP means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Foundation.

§ 614.4245 General.

(a) *Required appraisals and evaluations.* System lenders must obtain appraisals or evaluations of all collateral used to secure an extension of credit (including leasing activities) or the

purchased interest in credit extended by another lender. System lenders must maintain appraisals or evaluations reflecting current market conditions. At a minimum, every item of collateral must be appraised or evaluated both at the time a lien is obtained and when the System lender expects to liquidate its lienhold interest.

(b) *Format and minimum content requirements.* An appraisal or evaluation is a written impartial opinion of an asset's market value, independently developed and supported by analysis of relevant market information. The market analysis supporting the final opinion of value may be conducted using a variety of appraisal and evaluation tools and data sources.

(1) All appraisals must follow the format requirements of USPAP, or its successor. For evaluations, the presentation format may be in the form of a report, a synopsis, a computer-generated printout, or equivalent records, depending upon the asset and as permitted under the evaluation standards of 12 CFR 614.4250. The reporting format used for evaluations must be appropriate for both the type of asset being valued and the tools and data sources used in setting the value.

(2) To support an opinion of value, each appraisal or evaluation must, at a minimum, include:

(i) A description of the asset in sufficient detail to reflect the relevant characteristics and complexity of the subject asset;

(ii) Information that will enable the reader to ascertain the reasonableness of the estimated market value;

(iii) Identification of the data source(s) used for determining the final market value (*e.g.,* real estate comparable properties, the name and model version of an AVM used, the name and date of reputable publications used, validated information specific to the System lenders' territory); and, if applicable,

(iv) In those situations when different appraisal or evaluation standards are used than those normally employed for the type of asset being valued, the appraiser or evaluator must attest that use of the different standards was not due to any prohibited discriminatory factors like the age, race, or gender of the asset owner or buyer.

(c) *Age of appraisal or evaluation reports.* It is the responsibility of the System lender to monitor market conditions and trends, loan risk, and collateral conditions to appropriately determine the frequency for performing new or updated collateral appraisals or evaluations in keeping with regulatory requirements. When making credit decisions or approving new or additional funds, the System lender may use existing collateral appraisals or evaluations reports only if the appraisals or evaluations reflect current market conditions at the time of use.

(d) *Using the appraisals of another lender.* An appraisal ordered by another financial institution on assets of a loan applicant may be transferred to a System lender when:

(1) The System lender will complete the credit transaction instead of the other financial institution;

(2) The other financial institution and the applicant agree in writing to transfer the report;

(3) The other financial institution is either subject to Title XI of FIRREA or a System lender; and

(4) The System lender receiving and using the appraisal assumes full responsibility for the integrity, accuracy and thoroughness of the appraisal, including the methods used by the other financial institution to establish collateral values.

(e) *Releasing appraisals or evaluations to applicants and borrowers.*

(1) At any time during the life of the loan, an applicant or borrower may request a copy of each appraisal and evaluation made or used by the System lender in the credit relationship. The System lender must provide the copies within 7 calendar days of receiving the request. The copy of an appraisal or evaluation provided to an applicant or borrower must, at a minimum, contain the final opinion of value, the information required under 12 CFR 614.4245(b), and, as appropriate to the type of asset being valued, the information required under 12 CFR 614.4260 or 12 CFR 614.4265(d), (e), and (f). The first copy of each appraisal or evaluation given to the applicant or borrower must be provided free of charge, but the System lender may assess reasonable copying charges for any additional copies supplied during the life of the loan, excluding copies provided as part of an adverse credit decision.

(2) When issuing an adverse credit decision, a System lender must include as an attachment to the decision letter copies of those collateral evaluations and appraisals used in the decision-making process. The applicant or borrower is not required to first request such copies and the copies must be provided at no cost to the applicant or borrower. The copy of an appraisal or evaluation provided to an applicant or borrower must, at a minimum, contain the final opinion of value, the information required under 12 CFR 614.4255(b), and, as appropriate to the type of asset being valued, the information required under 12 CFR 614.4260 or 12 CFR 614.4265(d), (e), and (f).

(3) To the extent that an appraisal or evaluation may contain confidential third-party information, the lender may protect such confidential information as provided under 12 CFR 618.8325(b).

(f) *Records.* The System lender must maintain collateral appraisals or evaluations for the duration required by the lender's recordkeeping policies. The records must capture source data used as of the date of the evaluation. At a minimum, collateral appraisals or evaluations made or used by a System lender for making or servicing a loan must be maintained in the related credit file for the life of the loan. Appraisals and evaluations used to deny a credit request from a new applicant must be maintained in the related credit file for the same amount of time as the lender's recordkeeping policies and procedures require the credit request to be maintained.

§ 614.4250 Policies, standards, and internal controls for valuing collateral.

(a) *Policies.* The board of directors of each System lender must adopt and maintain written policies on when and how to issue collateral appraisals and evaluations for all of the System lender's credit functions. in keeping with regulatory requirements. Farm Credit banks must include OFIs in their policies and procedures for those lending and leasing activities conducted under 12 U.S.C. 2015(b)(1)(B). At a minimum, the policies must:

(1) Identify when an evaluation will be used instead of an appraisal (when the regulations allow either to be used);

(2) Establish parameters identifying the frequency and timing of appraisals and evaluations, including monitoring portfolio collateral values on an ongoing basis;

(3) Authorize or prohibit the use of out-of-territory appraisers or sharing appraisals;

(4) Establish parameters for using AVMs and other tools in identifying market values of real estate and/or chattel;

(5) Ensure the independence of the persons ordering, performing, and reviewing appraisals and evaluations;

(6) Prohibit basing an appraisal or evaluation on a requested minimum valuation, specific value, or loan amount;

(7) Implement internal controls that promote compliance with applicable laws, rules and policies; and, as applicable,

(8) Require OFIs to follow collateral appraisal and evaluation requirements.

(b) *Standards.* Each System lender must adopt and maintain written standards for appraisals and evaluations that implement regulatory requirements, and which are designed both to protect the lender's interest and adequately represent real-time collateral values. At a minimum, the standards must address:

(1) The level of information required to support the value assigned beyond regulatory minimum content requirements, including considerations for complex and specialized assets or high-risk transactions;

(2) Using collateral appraisals and evaluations in a manner consistent with safe and sound practices;

(3) The qualifications of individuals selected to perform an appraisal or evaluation;

(4) Development and maintenance of a list of approved fee appraisers and fee evaluators, including the criteria to follow when selecting and engaging a fee appraiser or fee evaluator;

(5) Providing fee appraisers and fee evaluators with a copy of the collateral appraisal and evaluation regulations contained in this subpart and instructing the fee appraiser or fee evaluator to apply the regulatory requirements in formation of the contracted appraisal or evaluation;

(6) On-going reviews of market conditions, including how recognition of special events affecting values, such as natural disasters, will be handled;

(7) The frequency and form of property inspections; and

(8) How existing appraisals and evaluations will be handled in renewals, refinancings, and other subsequent credit transactions.

(c) *Internal Controls.* Each System lender must have written internal control policies and procedures for managing its collateral appraisal and evaluation activities. The internal controls policies and procedures must be kept up-to-date and, at a minimum, include the following elements:

(1) Protecting the integrity of the overall collateral appraisal and evaluation function;

(2) Verifying the condition of pledged collateral is as listed in the appraisal or evaluation report;

(3) Safeguarding the independence of appraisers and evaluators in activities conducted under this subpart;

(4) Ensuring appraisals and evaluations are used to verify collateral market values contained within credit analysis and financial statements; and

(5) Reviewing appraisals and evaluations periodically for compliance with applicable laws, regulations, policy and industry standards.

§ 614.4255 Appraiser and evaluator qualifications and independence.

System lenders are responsible for verifying that persons performing appraisals and evaluations for use by the lender meet the requirements of this section.

(a) *Competency.* An appraiser or evaluator must have the requisite knowledge and experience for both the specific asset being valued and the relevant market area.

(1) An appraiser or evaluator may not be considered competent solely by virtue of being certified, licensed, or accredited. Any determination of competency must be based on the individual's experience and educational background as it relates to the specific appraisal or evaluation assignment for which such individual is being considered.

(2) A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization. System lenders may use State certified or State licensed appraisers from any State provided that:

(i) The appraiser is competent to perform such appraisals;

(ii) The applicable System lender has established policies providing for use of interstate appraisals; and

(iii) The State appraiser licensing and certification agency where the subject property is located recognizes the certification or license of the appraiser's State of permanent certification or licensure.

(b) *Staff appraisers and evaluators.* Each System lender must maintain written standards implementing regulatory requirements on appraiser and evaluator independence from lending activities, as well as real or perceived conflicts of interest, for collateral appraisal and evaluation functions performed by staff of the System lender. The standards must address how a separate secondary review of the assigned value(s) by a person not connected to the credit decision will be used and determine if the secondary review will happen before the final credit decision is made or soon after loan closing. The written standards on appraiser and evaluator independence from lending activities, at a minimum, must also:

(1) Facilitate the exercise of independent judgment by staff appraisers and evaluators when developing collateral values by providing protections from undue influence by the loan production and collection processes;

(2) Require staff appraisers and evaluators to have no direct, indirect, or prospective interest, financial or otherwise, in the asset being valued;

(3) Require staff appraisers and evaluators to have no direct, indirect, or prospective interest, financial or otherwise, in the transaction for which the appraisal or evaluation will be used when there is no separate secondary review of the assigned value(s) by another person who is not connected to the credit decision nor a member of the Credit Review Committee (CRC) reviewing the credit decision; and

(4) Restrict staff appraisers and evaluators from subsequent participation in any decision related to a loan connected to the collateral that the staff member is valuing, including the sale, purchase, or servicing of that loan, when there is no separate secondary review of the assigned value(s) by another person who is not connected to the credit decision (including through service on the CRC) or subsequent credit activities.

(c) *Prohibitions.* In addition to required internal controls for managing a System lender's collateral appraisal and evaluation activities, the following prohibitions apply:

(1) No person may be a fee appraiser or fee evaluator for the System lender when such person has a direct or indirect interest, financial or otherwise, in the loan or subject property being valued (excluding fees generated from performing an appraisal or evaluation).

(2) No director of the System lender may vote on or approve a loan decision when that same person performed the collateral appraisal or evaluation for the loan under review.

(3) No director of the System lender may perform a collateral appraisal or evaluation in connection with any transaction on which such person made, or will be required to make, a credit decision.

(4) No director, officer, or employee of the System lender may perform an appraisal or evaluation of an asset serving as security for a credit request when that person has a direct or indirect interest, financial or otherwise, in the asset.

(5) Absent a secondary review process, no person may perform an appraisal or evaluation of an asset serving as security for a credit request or loan when that person is engaged in the marketing, lending, collection, or credit decision processes of any of the following:

(i) A System lender making or originating the loan;

(ii) A System lender operating under common management with the System lender making or originating the loan; or

(iii) A System lender purchasing an interest in the loan.

(6) A director, officer, or employee of the System lender performing a collateral appraisal or evaluation for assets connected to a credit or servicing request may not also serve as a Credit Review Committee member at a committee meeting where that appraisal or evaluation report, whether alone or as part of a credit decision, is under review. This prohibition extends to any person performing the secondary review process for an appraisal or evaluation that was prepared by a staff appraiser or evaluator.

§ 614.4260 Valuing business chattel, personal, and intangible property.

(a) *General.* A market value-based evaluation for business chattel, personal, or intangible property taken as collateral must employ the industry-recognized methods and techniques used to value similar property. Each System lender is responsible for identifying appropriate collateral evaluation data sources and applying proper criteria in evaluating business chattel, personal, and intangible property. When a request is made under 12 CFR 614.4245(e), the System lender must provide to the requestor the supporting information and criteria used in the evaluation of the subject asset(s).

(b) *Data source(s).* Data sources used to establish the market value of business chattel, personal, or intangible property may include, but are not limited to, AVMs, reputable industry publications, validated information specific to the System lender's territory, equipment dealers, grain buyers, livestock buyers, auctioneers, commodities market, and market sales reports. Identification of data sources made pursuant to the requirements of 12 CFR 614.4245(b)(2)(iii) must include the name of the source and the date of the publication/contact or version of AVM used, as applicable.

(c) *Business chattel and personal property.* When providing details of a subject asset under the requirements of 12 CFR 614.4245(b)(2), an evaluation for business chattel and personal property must explain the quality, condition, quantity, species, weight, value per unit, etc. of the asset, as applicable to the type of asset being valued. The evaluation must also describe the location of the chattel at time of valuation.

(d) *Intangible items.* For intangibles only, the evaluation must include a review and description of the documents supporting the interest(s) in the asset and marketability of the intangible property, including applicable terms, conditions, and restrictions contained in the document that would affect the value of the property.

§ 614.4265 Valuing real property.

(a) *General.* An appraisal is required for all real estate collateral unless an evaluation is specifically permitted by this section.

(b) *Appraiser limitations.* Only a State certified real estate appraiser may issue an appraisal report for real estate-related financial transactions over $1,000,000.

(c) *Permitted use of evaluations.* System lenders may establish the value of real estate collateral through an evaluation in any of the following loan transactions (if documentation justifies use of such exceptions):

(1) *Non-business loan transactions.* An evaluation of real estate may be used instead of an appraisal for a non-business loan with a transaction value at or below $250,000.

(2) *Business loan transactions.* An evaluation of real estate may be used instead of an appraisal for a business loan with a transaction value at or below $1,000,000 provided repayment of the loan is not primarily dependent upon either:

(i) Income derived from the sale of real estate, or

(ii) Income from the cash rental of real property being rented for nonagricultural purposes.

(3) *Subsequent loan transactions.* An evaluation of real estate may be used instead of an appraisal for subsequent loan transactions that do not involve new collateral or the advancement of new loan funds, other than funds necessary to cover reasonable closing costs. Additionally, there must be no obvious or material change in the physical aspects of the existing real estate collateral or market conditions affecting the property.

(4) *Purchased loans.* An evaluation of real estate may be used instead of an appraisal when a System lender purchases a loan or an interest in a loan, pool of loans, or interests in real property, including mortgage-backed securities, provided that:

(i) The originating lender's real estate appraisal prepared for each loan, pooled loan, or real property interest, when originated, met the standards of this subpart, other Federal regulations adopted pursuant to FIRREA, or the requirements of the government-sponsored secondary market intermediaries under whose auspices the interest is sold; and

(ii) There has been no obvious or material change in market conditions or the physical aspects of the property that would threaten the System lender's secured position.

(5) *U.S. Government guarantee.* An evaluation of real estate may be used instead of an appraisal when a System lender makes a loan secured by real estate and such loan is guaranteed by an agency of the United States Government and use of an evaluation conforms to the requirements of the guaranteeing agency. An evaluation of real estate may be used instead of an appraisal when a System lender purchases a loan secured by real estate and such loan is both guaranteed by an agency of the United States Government and otherwise supported by an appraisal that conforms to the requirements of the guaranteeing agency.

(6) *Additional security.* When a System lender makes a loan secured, in part or in whole, by real estate and some or all of the real estate is taken out of an abundance of caution, an evaluation, in lieu of an appraisal, of the real estate taken out of an abundance of caution is permitted. All other real estate security must be appraised, absent another permitted use of evaluations being applicable.

(d) *Determining value.* Real estate is valued on its market value, which must be developed from considering three approaches: The income capitalization approach, the sales comparison approach, and the cost approach. Consideration of all three approaches includes identifying all relevant influences, including, but not limited to, urban development, mineral deposits, and commercial activity in the area. All real estate appraisals and evaluations must include detailed documentation of the main approach used to identify the market value of the subject property, including an explanation of why that approach was the primary method relied upon by the appraiser or evaluator. The appraisal or evaluation must include a general discussion of the other approaches considered but not relied upon to reach the final market value. In situations where one or more of the three approaches must be excluded from consideration due to a lack of data, the appraisal or evaluation must include an explanation justifying the exclusion.

(1) *Income capitalization approach.* The income capitalization approach measures the present value of the expected future benefits of property

ownership. This value is derived from either:

(i) Capitalizing a single year's income expectancy or an annual average of several years' income expectancies at a market-derived capitalization rate that reflects a specific income pattern, return on investment, and change in the value of the investment; or

(ii) Discounting the annual cashflows for the holding period and the reversion at a specified yield rate or specified yield rates which reflect market behavior.

(2) *Sales comparison approach.* The sales comparison approach compares the subject property to similar properties located in relatively close proximity, having similar size and utility, and which have been recently sold in arm's-length transactions (comparable sales). Not less than three comparable sales will be used unless the appraiser or evaluator provides documentation that such comparable sales are not available. Under this approach, the appraiser or evaluator must estimate the degree of similarity and difference between the subject property and comparable sales. Such comparison must be based on conditions of sale, financing terms, market conditions, location, physical characteristics, and income characteristics. Appropriate adjustments to the sales prices of comparable properties are allowed when there are identified deficiencies or superiorities of the subject property. The appraiser or evaluator must use his or her knowledge of the area and apply good judgment in the selection of comparable sales that are the best indicators of value for the subject property.

(3) *Cost approach.* The cost approach establishes an indicated value by measuring the current market cost to construct a reproduction of, or replacement for, the improvements, minus the amount of depreciation (physical deterioration, or functional obsolescence) evident in the structure from all causes, plus the market value of the land. If the appraiser or evaluator considers the property to be unique or have specialized improvements, the appraiser or evaluator will identify the source of the cost estimates and will comment on the methodology used to estimate depreciation, effective age and remaining economic life.

(e) *Valuation of fixtures.* Real estate fixtures closely aligned with, an integral part of, and normally sold with real estate are included in the value of the real estate and must be identified in the appraisal or evaluation. Structures principally used, or capable of being used, for income-producing agricultural or farming commercial enterprise purposes, such as barns, silos, commercial greenhouses, or livestock facilities, must be assigned a value. At the discretion of the appraiser or evaluator, non-dwelling structures no longer used for a commercial purpose and which the average buyer would consider as adding no contributory role to the real estate do not require assignment of a value.

(f) *Additional report content requirements.* In addition to the minimum content requirements of 12 CFR 614.4245(b) and the requirements of paragraphs (d) and (e) of this section, an appraisal or evaluation for real estate must include all of the following:

(1) A description of any permanent fixtures, known water and mineral rights, and recorded access rights associated with the real estate being valued.

(2) The purpose for which the property is or will be used by the loan applicant or borrower, if different from the highest and best use.

(3) A list of readily observable conditions that may pose a present environmental hazard. If the System lender knows, or is informed by another party, of a potential hazard, that information must be disclosed to the appraiser or evaluator before the appraisal or evaluation is completed.

(4) Identification of any structures located in known flood hazard areas. When the real property being valued includes buildings or dwellings in a Special Flood Hazard Area, the appropriate Federal Emergency Management Agency form identifying the structure and its location on the property, as required by § 614.4940 of this part, must be made available to the appraiser or evaluator before the appraisal or evaluation report is completed.

(5) The reasonable sales exposure time, the current market conditions or trends affecting, or likely to affect, the value of the land, and the most probable marketplace for the land.

§ 614.4270 Appraisal and evaluation tools.

A System lender may use a variety of analytical methods and technological tools in developing an appraisal or evaluation, provided the lender can demonstrate that the method(s) used is consistent with safe and sound lending practices and contains sufficient information and analysis to support the resulting market value conclusion. The tools by themselves do not constitute either an appraisal or evaluation.

(a) *Automated models (AVM).* Values for real estate, business chattel, personal, and intangible property may be determined using computer-based models only when there is sufficient data enabling the model's statistical determination of accurate market values.

(1) *Scope of use.* Use of an AVM must be commensurate with the System lender's credit risk exposure and due diligence in setting minimum performance criteria for the model. Any assumption used must be fully supported and appropriate for the subject property. A System lender must have or engage persons with expertise relative to a particular method or tool before using that analysis tool.

(2) *Validation.* System lenders must establish an independent validation process to determine the appropriate application of AVMs. Persons overseeing the model validation must be independent of the loan underwriting and portfolio management process. If the System lender adopts a third-party vendor model, the lender must periodically document the integrity and applicability of the model and the vendor's maintenance of the model.

(b) *Tax assessment values (TAV).* System lenders may use TAV only in the appraisal or evaluation of real estate. When using TAVs, the System lender must determine and document how the tax jurisdiction calculates the TAV and how frequently TAVs are updated. A System lender may rely on the data provided by local tax authorities to develop the resulting market value unless inconsistent with safe and sound lending practices or, when applicable, USPAP. The use of a TAV requires additional support to demonstrate a valid correlation between the TAV and market value.

(c) *Internal controls when using appraisal and evaluation tools.* A System lender must establish and maintain written policies and procedures providing a sound process for using various methods or tools and for verifying that a valuation method or tool is employed in a consistent manner. At a minimum, the policies and procedures must:

(1) Define the requisite expertise and training of staff in managing the selection, use, and validation of an analytical method or technological tool;

(2) Address the selection, use, and validation of the analysis method or tool;

(3) Establish criteria for determining whether a particular method or tool is appropriate for a given transaction or lending activity, considering associated risks for transaction size and purpose, credit quality, and leverage tolerance (loan-to-value);

(4) Specify criteria identifying when a market event or risk factor would preclude the use of a particular method or tool;

(5) Address standards for the use of multiple methods or tools, if applicable, for valuing the same property or to support a particular lending activity;

(6) Provide criteria for ensuring that the method or tool used produces a reliable estimate of market value; and

(7) Address the extent to which an inspection or research is necessary to ascertain the property's actual physical condition and what supplemental information is needed to assess the effect of market conditions or other factors on the AVM estimate of market value.

§ 614.4275 Reservation of authority.

(a) Nothing in this subpart shall be read to limit the authority of the Farm Credit Administration to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law and regulation.

(b) FCA reserves the right to require an appraisal or evaluation under this subpart whenever it believes it is necessary to address safety and soundness issues.

(c) Nothing in this subpart prevents the FCA from accessing appraisals and evaluations during an examination, enforcement action, or other exercise of its regulatory authority.

Dated: May 10, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021–10200 Filed 5–19–21; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24733; Project Identifier MCAI–2021–00139–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) and Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) to supersede AD 2002–08–16, which applies to certain Eurocopter France SA341G, SA342J, and SA–360C helicopters. The NPRM proposed to require removing certain main rotor head torsion tie bars (tie bars) from service and revising the limitations section of the existing maintenance manual for your helicopter by adding life limits for those tie bars. The NPRM was prompted by the determination that another part-numbered tie bar was affected by the same unsafe condition. This action reopens the comment period because a significant amount of time has elapsed since the NPRM was published. This action also revises the NPRM by updating the type certificate holder's name, updating the estimated cost information, clarifying the requirements and compliance times, and adding parts installation prohibitions. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the agency is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by June 21, 2021.

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

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

For Eurocopter service information identified in this SNPRM, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2006–24733; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the Direction Generale De L'Aviation Civile (DGAC) ADs, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–24733; Project Identifier MCAI–2021–00139–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may again revise this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza N SW,

Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 to remove AD 2002–08–16 (67 FR 19640, April 23, 2002) (AD 2002–08–16), and add a new AD. AD 2002–08–16 applies to Eurocopter France Model SA341G, SA342J, and SA–360C helicopters with a tie bar part number (P/N) 341A31–4904–00, –01, –02, –03; 341A31–4933–00, –01; or 360A31–1097–02, –03, installed. The NPRM published in the **Federal Register** on May 10, 2006 (71 FR 27215). The NPRM proposed to continue to require removing certain tie bars from service and revising the limitations section of the existing maintenance manual for your helicopter by adding life limits for those tie bars. The NPRM also proposed adding tie bar P/N 704A33–633–270 to the applicability, and to require removing it from service within 600 hours time-in-service (TIS) or 2 years, whichever occurs first, and revising the limitations section of the existing maintenance manual for your helicopter accordingly. The NPRM was prompted by DGAC AD 2001–587–041(A) R2, dated January 8, 2003 (DGAC AD 2001–587–041(A) R2), issued by the DGAC, which was the Technical Agent for France, to correct an unsafe condition for Model SA 341/342 helicopters. The DGAC advised of another affected tie-bar P/N 704A33–633–270 and additional flight restrictions for the new-affected tie bar. The DGAC also advised that Eurocopter issued Alert Service Bulletin No. 01.29, Revision 0, dated December 4, 2002 (ASB 01.29), to cancel Alert Telex (AT) No. 01.28, dated August 7, 2001, and supersede AT 01.29, Revision 1, dated December 11, 2001. This condition, if not addressed, could result in failure of a tie bar and subsequent loss of control of the helicopter.

Accordingly, DGAC AD 2001–587–041(A) R2, along with DGAC AD 2001–588–047(A) R1, dated December 26, 2001 (DGAC AD 2001–588–047(A) R1), for Model SA 360 helicopters, require removing certain part-numbered tie bars from service and a life limit for certain other part-numbered tie bars.

Actions Since the NPRM Was Issued

Since the NPRM was issued, a significant amount of time has elapsed requiring the FAA to reopen the comment period to allow the public a chance to comment on the proposed actions.

Additionally, since the FAA issued the NPRM, Eurocopter France has changed its name to Airbus Helicopters. This SNPRM reflects that change and updates the contact information to obtain service documentation. This SNPRM also updates the estimated cost information.

Additional review also revealed necessary changes to address the unsafe condition. This SNPRM proposes to clarify that the compliance times of requirements continued from AD 2002–08–16 are effective after the effective date of AD 2002–08–16, clarify instances of life limits specified in calendar time that they are since initial installation of the tie bar on any helicopter, clarify one instance of a life limit that it is total hours TIS or calendar time—whichever occurs first, and add parts installation prohibitions. This SNPRM also updates the AD format. As a result, paragraph identifiers have changed, editorial changes have been made to meet current publishing requirements, and the proposed requirements have been revised by removing unnecessary information.

The FAA's Aircraft Certification Service has also changed its organizational structure. The new structure replaces product directorates with functional divisions. The FAA has revised some of the office titles and nomenclature throughout this proposed AD to reflect the new organizational changes. Additional information about the new structure can be found in the Notice published on July 25, 2017 (82 FR 34564).

Lastly, the identification of ''Directorate Identifier 2005–SW–08–AD'' has been changed to ''Project Identifier MCAI–2021–00139–R.''

Comments

The following discussion presents the comments received on the NPRM and the FAA's response.

Request

One commenter opposed the proposed AD without requesting any changes to the NPRM or on the determination of the cost. The FAA has made no changes based on this comment.

FAA's Determination

These helicopters have been approved by the European Union Aviation Safety Agency (EASA) and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, the FAA has been notified about the unsafe condition described in the DGAC ADs. The FAA is proposing this AD after determining the unsafe condition described previously is likely to exist or develop in other helicopters of the same type designs. Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information

The FAA reviewed Eurocopter ASB 01.29 and Eurocopter AT No. 01.39, Revision 1, dated December 11, 2001. This service information specifies removing certain part-numbered tie bars at specified life limits.

Proposed AD Requirements in This SNPRM

This proposed AD would require removing tie bars P/N 341A31–4904–00, –01, –02, and –03; and 360A31–1097–02 and –03 from service and prohibit installing those part-numbered tie bars on any helicopter. This proposed AD would also initially require removing tie bars P/N 341A31–4933–00 and –01; and 704A33–633–270 from service if they have accumulated or exceeded the specified life limit, and thereafter removing those part-numbered tie bars before accumulating the specified life limit.

Differences Between This SNPRM and the DGAC ADs

For an affected tie bar that has accumulated 7 or more years since initial installation on any helicopter, DGAC AD 2001–587–041(A) R2 requires removing the tie bar before next flight, whereas this proposed AD allows removal within 5 hours TIS instead.

For an affected tie bar that has accumulated 15 or more years since initial installation on any helicopter, DGAC AD 2001–588–047(A) R1 requires removing the tie bar before next flight, whereas this proposed AD does not. For an affected tie bar that has accumulated 7 or more years since initial installation on any helicopter, DGAC AD 2001–588–047(A) R1 requires removing the tie bar before next flight, whereas this proposed AD allows removal within 5 hours TIS instead. DGAC AD 2001–588–047(A) R1 allows a ferry flight not to exceed 5 hours to return the helicopter to a maintenance base, where as special flight permits are prohibited by this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 29 helicopters of U.S. Registry. Labor rates

are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Replacing a tie bar would take about 1.5 work-hours and parts would cost about $9,579 for an estimated cost of $9,707 per tie bar.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2002–08–16, Amendment 39–12725 (67 FR 19640, April 23, 2002); and

■ b. Adding the following new airworthiness directive:

Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) and Eurocopter France: Docket No. FAA–2006–24733; Project Identifier MCAI–2021–00139–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by June 21, 2021.

(b) Affected ADs

This AD replaces AD 2002–08–16, Amendment 39–12725 (67 FR 19640, April 23, 2002) (AD 2002–08–16).

(c) Applicability

This AD applies to Airbus Helicopters (type certificate previously held by Eurocopter France) Model SA341G and SA342J and Eurocopter France Model SA–360C helicopters, certificated in any category, with a main rotor head torsion tie bar (tie bar), part number (P/N) 341A31–4904–00, –01, –02, –03; 341A31–4933–00, –01; 360A31–1097–02, –03; or 704A33–633–270, installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6220, Main Rotor Head.

(e) Unsafe Condition

This AD was prompted by an accident caused by the failure of a tie bar. The FAA is issuing this AD to prevent failure of a tie bar, which if not addressed, could result in loss of a main rotor blade and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For tie bar P/N 341A31–4904–00, –01, –02, and –03; and 360A31–1097–02 and –03, before further flight after May 8, 2002 (the effective date of AD 2002–08–16), remove the tie bar from service.

(2) For each tie bar P/N 341A31–4933–00 and –01:

(i) Before further flight after May 8, 2002 (the effective date of AD 2002–08–16), determine the date of initial installation on any helicopter, or if the date of initial installation cannot be determined, use the date of manufacture.

(A) For a tie bar that has accumulated 7 or more years since initial installation on any helicopter, within 5 hours time-in-service (TIS) after May 8, 2002 (the effective date of AD 2002–08–16), remove the tie bar from service.

(B) For a tie bar manufactured before 1995 that has accumulated less than 7 years since initial installation on any helicopter, before accumulating 7 years since initial installation on any helicopter, before accumulating 300 total hours TIS, or within 1 year after May 8, 2002 (the effective date of AD 2002–08–16), whichever occurs first, remove the tie bar from service.

(C) For a tie bar manufactured in 1995 or later that has accumulated less than 7 years since initial installation on any helicopter, before accumulating 7 years since initial installation on any helicopter, before accumulating 600 total hours TIS, or within 2 years after May 8, 2002 (the effective date of AD 2002–08–16), whichever occurs first, remove the tie bar from service.

(ii) Thereafter following paragraph (g)(2)(i) of this AD, remove any tie bar P/N 341A31–4933–00 and –01 from service as follows:

(A) For a tie bar manufactured before 1995, remove the tie bar from service before accumulating 300 total hours TIS or 1 year since initial installation on any helicopter, whichever occurs first, and

(B) For a tie bar manufactured in 1995 or later, remove the tie bar from service before accumulating 600 total hours TIS or 2 years since initial installation on any helicopter, whichever occurs first.

(3) For tie bar P/N 704A33–633–270:

(i) Before further flight after the effective date of this AD, determine the date of initial installation on any helicopter, or if the date of initial installation cannot be determined, use the date of manufacture.

(ii) If the tie bar has accumulated 600 or more total hours TIS or 2 or more years since initial installation on any helicopter, whichever occurs first, before further flight, remove the tie bar from service.

(iii) If the tie bar has accumulated less than 600 total hours TIS or 2 years since initial installation on any helicopter, whichever occurs first, remove the tie bar from service before accumulating 600 total hours TIS or 2 years since initial installation on any helicopter, whichever occurs first.

(iv) Thereafter following paragraph (g)(3)(ii) or (iii) of this AD, remove any tie bar P/N 704A33–633–270 from service before accumulating 600 total hours TIS or 2 years since initial installation on any helicopter, whichever occurs first.

(4) As of the effective date of this AD, do not install tie bar P/N 341A31–4904–00, –01, –02, or –03; or 360A31–1097–02 or –03, on any helicopter.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as

appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

(2) The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) ADs 2001–588–047(A) R1, dated December 26, 2001, and 2001–587–041(A) R2, dated January 8, 2003. You may view those ADs on the internet at *https://www.regulations.gov* in the AD Docket.

Issued on May 11, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–10352 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0360; Airspace Docket No. 21–AEA–6]

RIN 2120–AA66

Proposed Amendment of Air Traffic Service (ATS) Routes; Northeast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VOR Federal airways V–39 and V–93 in support of the Northeast Corridor Atlantic Coast Route (NEC ACR), and the VOR Minimum Operational Network (VOR MON) Projects.

DATES: Comments must be received on or before July 6, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0360; Airspace Docket No. 21–AEA–6 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend ATS routes to improve the efficiency of the NAS.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–0360; Airspace Docket No. 21–AEA–6) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2121–0360; Airspace Docket No. 21–AEA–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11E lists Class A, B, C, D, and E airspace

areas, air traffic service routes, and reporting points.

Background

Federal airways V–39 and V–93 were originally part of a larger proposal that was published in the **Federal Register** for Docket No. FAA–2020–1146 (86 FR 5046; January 19, 2021). No comments were received in response to that NPRM. Subsequent to the publication of the NPRM, an FAA flight inspection of an airway fix (defined by the intersection of the Barnes, MA (BAF) VORTAC 279°, and the Chester, MA (CTR) VOR/DME 223° radials), could not be completed due to technical reasons. Because the fix would be common to both airways, the proposed amendments of V–39 and V–93 were removed from Docket No. FAA–2020–1146 and delayed to a later date in order to address the airway fix issue.

The FAA determined that the fix defined by the intersection of the Barnes, MA, and Chester, MA, radials (described above) could be removed from the route descriptions because it did not mark a turn point on the routes.

As a difference from the original NPRM, the FAA proposes to retain the affected route segments of V–39 and V–93 to Chester, MA, (as described below) rather than ending the route segments prior to Chester.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–39 and V–93 as follows.

V–39: V–39 currently extends between Sandhills, NC, and Mont Joli, PQ, Canada. The FAA proposes to remove the airway segments between Chester, MA, and Augusta, ME. As amended, V–39 would consist of two parts: From Sandhills, NC, to Chester, MA; followed by a gap in the route; then from Augusta, ME to Mont Joli, PQ, Canada.

V–93: V–93 currently consists of two parts: From Patuxent River, MD, to the intersection of the Wilkes Barre, PA, 037° and the Sparta, NJ, 300° radials; and from the intersection of the Sparta, NJ, 018° and the Kingston, NY, 270° radials, to Bangor, ME. This action would remove the segments between Chester, MA, and Bangor, ME. As amended, V–93 would consist of two parts: From Patuxent River, MD, to the intersection of the Wilkes Barre, PA, 037° and the Sparta, NJ, 300° radials; followed by a gap; then from the intersection of the Sparta, NJ, 018° and the Kingston, NY, 270° radials, to Chester, MA.

Full route descriptions of the proposed amended routes are listed in ''The Proposed Amendment'' section of this notice.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–39 [Amended]

From Sandhills, NC, South Boston, VA; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Lancaster, PA; East Texas, PA; Sparta, NJ; Carmel, NY; INT Carmel 045° and Bridgeport, CT, 343° radials; INT Bridgeport 343° and Chester, MA, 223° radials; to Chester, MA. From Augusta, ME; Millinocket, ME; Presque Isle, ME; Mont Joli, PQ, Canada, excluding the portion within Canada.

* * * * *

V–93 [Amended]

From Patuxent River, MD, INT Patuxent 013° and Baltimore, MD, 122° radials; Baltimore; INT Baltimore 004° and Lancaster, PA, 214° radials; Lancaster; Wilkes-Barre, PA; to INT Wilkes-Barre 037° and Sparta, NJ 300° radials. From INT Sparta 018° and Kingston, NY, 270° radials; Kingston; Pawling, NY; to Chester, MA.

* * * * *

Issued in Washington, DC, on May 13, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–10444 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0296; Airspace Docket No. 21–ASW–6]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Palestine, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Palestine Municipal Airport, Palestine, TX. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Palestine non-directional beacon (NDB). The geographical coordinates of the airport would also be updated to

coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 6, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0296/Airspace Docket No. 21–ASW–6, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0296/Airspace Docket No. 21–ASW–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface within 6.6 mile (decreased from 7.1-mile) radius of Palestine Municipal Airport, Palestine, TX, and by removing the Palestine NDB and associated extension from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Palestine NDB, which provided navigation information for the instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ASW TX E5 Palestine, TX [Amended]

Palestine Municipal Airport, TX
(Lat. 31°46′47″ N, long. 95°42′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Palestine Municipal Airport.

Issued in Fort Worth, Texas, on May 14, 2021.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–10560 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0075; Airspace Docket No. 21–ASO–2]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Muscle Shoals, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface in Muscle Shoals, AL, due to the decommissioning of the Muscle Shoals Very High Frequency Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), and cancellation of the associated approach at Northwest Alabama Regional Airport. This action would also update the airport name under the Class E surface airspace. This action would also make an editorial change replacing the term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class E airspace. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before July 6, 2021.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0075; Airspace Docket No. 21–ASO–2, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Northwest Alabama Regional Airport, Muscle Shoals, AL, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–0075 and Airspace Docket No. 21–ASO–2) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0075; Airspace Docket No. 21–ASO–2.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments

will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface at Northwest Alabama Regional Airport, Muscle Shoals, AL, as the Muscle Shoals VORTAC has been decommissioned, and associated approaches cancelled. The radius of the airport would decrease from 7 miles to 6.8 miles, adding a 12.5-mile extension to the east and an 8.1-mile extension to the south. Also, the FAA proposes to update the airport name to Northwest Alabama Regional Airport, (formerly Muscle Shoals Regional Airport) in both the surface E airspace and Class E airspace extending upward from 700 feet above the surface. In addition, the FAA proposes to replace the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class E airspace legal description for this airport.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO AL E2 Muscle Shoals, AL [Amended]

Northwest Alabama Regional Airport, AL
(Lat. 34°44′43″ N , long. 87°36′37″ W)

That airspace extending upward from the surface within a 4.2-mile radius of Northwest Alabama Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO AL E5 Muscle Shoals, AL [Amended]

Northwest Alabama Regional Airport, AL
(Lat. 34°44′43″ N, long. 87°36′37″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.8-mile radius of Northwest Alabama Regional Airport, and within 3.7-miles each side of the 114° bearing from the airport, extending from the 6.8-mile radius to 12.5-miles east of the airport, and within 1.2-miles each side of the 181° bearing from the airport, extending from the 6.8-mile radius to 8.1-miles south of the airport.

Issued in College Park, Georgia, on April 29, 2021.

Andreese C. Davis,

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

[FR Doc. 2021–10442 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0355; Airspace Docket No. 21–AEA–7]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Massena, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface area and Class E airspace extending upward from 700 feet above the surface at Massena International-Richards Field Airport, Massena, NY. The FAA is proposing this action as a result of an airspace review caused by the decommissioning of the Massena Very High Frequency Omnidirectional Range (VOR) Tactical Air Navigation (VORTAC) aid as part of the VOR Minimum Operational Network (MON) Program. This action would also update the geographic coordinates of Massena International-Richards Field Airport, Massena, NY, to coincide with the FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before July 6, 2021.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0355; Airspace Docket No. 21–AEA–7, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class E airspace in Massena, NY, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–0355 and Airspace Docket No. 21–AEA–7) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0355; Airspace Docket No. 21–AEA–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E surface airspace and Class E airspace extending upward from 700 feet above the surface for Massena International-Richards Field Airport, Massena, NY, as the Massena VORTAC has been decommissioned and all associated airspace extensions of Class E surface airspace and Class E airspace extending upward from 700 feet above the surface, off the Massena VORTAC have been eliminated. The Class E Surface airspace would be amended by increasing the radius of the airport to 6.0 miles (previously 4.0 miles), and the Class E

airspace extending upward from 700 feet above the surface would be amended by increasing the radius to 8.5 miles (previously 7.4 miles). In addition, the geographical coordinates of Massena International-Richards Field Airport, Massena, NY, would be updated to coincide with the FAA's database.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA NY E2 Massena, NY [Amend]

Massena International-Richards Field Airport, Massena, NY
(Lat. 44°56′10″ N, long. 74°50′42″ W)

That airspace extending upward from the surface within a 6.0-mile radius of the Massena International-Richards Field Airport excluding that airspace outside of the United States.

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

* * * * *

AEA NY E5 Massena, NY [Amend]

Massena International-Richards Field Airport, Massena, NY
(Lat. 44°56′10″ N, long. 74°50′42″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Massena International-Richards Field Airport excluding that airspace outside of the United States.

Issued in College Park, Georgia, on May 13, 2021.

Andreese C. Davis,

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

[FR Doc. 2021–10432 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket ID–OSHA–2020–0009]

RIN 1218–AD28

Walking-Working Surfaces

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSHA is proposing changes to the Walking-Working Surfaces standards to clarify which handrail and stair rail system requirements apply to new stair rail systems.

DATES: Submit comments (including comments on the information collection (paperwork) determination described under the section titled **SUPPLEMENTARY INFORMATION** of this document), hearing requests, and other information by July 19, 2021. All submissions must bear a postmark or provide other evidence of the submission date. (See the following section titled **ADDRESSES** for methods you can use in making submissions.)

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

OSHA will place comments and requests for a hearing, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Mark Hagemann, Director, Office of Safety Systems, OSHA Directorate of Standards and Guidance; telephone: (202) 693–2222; email: *hagemann.mark@dol.gov.*

Electronic copies of this notice: Go to OSHA's website (*http://www.osha.gov*), and select ''**Federal Register**,'' ''Date of Publication,'' and then ''2021.'' Additional information for submitting documents. See section XI (''Public Participation'') of this notice.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 18, 2016, OSHA published a final rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) in the **Federal Register** (81 FR 82494). Since that time, OSHA has received many questions and requests for interpretation of the requirements for handrails and stair rail systems. From the number of questions and requests, OSHA believes there is confusion in the stakeholder community regarding when handrails are required on stairs as well as what the height requirements are for handrails on stairs and for stair rail systems, depending on date of installation. With this notice, OSHA is proposing language that it believes is clearer without changing the intent of the 2016 final rule. OSHA encourages interested parties to submit comments regarding the proposed language. Please note that OSHA is not re-opening for discussion any of the regulatory decisions made in the 2016 rulemaking. This rulemaking is focused solely on clarifying the requirements finalized in that rulemaking and providing flexibility in the transition from OSHA's previous requirements to the new ones.

II. Legal Authority

The purpose of the OSH Act is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards (29 U.S.C. 655(b), 657, 658).

An occupational safety and health standard ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' (29 U.S.C. 652(8)).

As part of determining that a standard is reasonably necessary or appropriate within the meaning of 29 U.S.C. 652(8), OSHA must determine that the standard is technologically feasible and substantially reduces a significant risk of harm to workers.

A standard is technologically feasible if the protective measures it requires already exist, available technology can bring these measures into existence, or there is a reasonable expectation for developing the technology that can produce these measures. See, *e.g., Am. Iron & Steel Inst.* v. *OSHA (Lead II),* 939 F.2d 975, 980 (D.C. Cir. 1991) (per curiam). In the 2016 rulemaking, OSHA determined that the requirements of the walking-working surfaces standard were technologically feasible (81 FR 82800). The proposed revisions to that standard would not require any new equipment, practices, or procedures not already addressed in the previous technological feasibility finding, so OSHA preliminarily determines that the proposed rule would be technologically feasible.

The final rule for OSHA's 2016 standard contained an extensive analysis in which the agency concluded that employees face a significant risk of death or serious injury from stairway falls (81 FR 82496). When, as here, OSHA has previously determined that the standard substantially reduces a significant risk, it is unnecessary for the agency to make additional findings on risk for every provision of that standard. See, *e.g., Public Citizen Health Research Grp.* v. *Tyson,* 796 F.2d 1479, 1502 n.16 (D.C. Cir. 1986) (rejecting the argument that OSHA must ''find that each and every aspect of its standard eliminates a significant risk''). Rather, once OSHA makes a general significant risk finding in support of a standard, the next question is whether a particular requirement is reasonably related to the purpose of the standard as a whole. (*Asbestos Info. Ass'n/N. Am.* v. *Reich,* 117 F.3d 891, 894 (5th Cir. 1997); *Forging Indus. Ass'n* v. *Sec'y of Labor,* 773 F.2d 1436, 1447 (4th Cir. 1985); *United Steelworkers of Am., AFL–CIO–CLC* v. *Marshall,* 647 F.2d 1189, 1237–38 (D.C. Cir. 1980)). As explained elsewhere in this preamble, this proposed rule meets this test. OSHA is proposing revisions to the standard that are intended to give effect to OSHA's original intent in the 2016 rule with respect to handrails on open staircases and to clarify it with respect to the height of top-rail handrails.

III. Summary and Explanation of the Proposed Rule

OSHA is proposing changes to two provisions of the walking-working surfaces standard, Subpart D. The first, amending § 1910.28(b), clarifies that a stair rail system [1] with a handrail [2] is required on the open side of certain stairways. The second, amending § 1910.29(f), eases a restriction on previously-installed stair rail systems by allowing the top rail of those systems to serve as a handrail when it is as low as 30 inches.

Section 1910.28 Duty To Have Fall Protection and Falling Object Protection

Existing § 1910.28(b)(11)(ii) contains requirements for when handrails and stair rail systems must be present on certain flights of stairs. The provision refers to existing Table D–2, *Stairway Handrail Requirements,* which specifies handrail requirements based on the variables of stair width and how many sides of the stairway are open. Existing Table D–2 contains a formatting error that inadvertently omits several words from the table with two open sides and a width of less than 44 inches. A cell in the table currently contains the words ''One stair rail system each open side,'' but OSHA intended the cell to state: ''One stair rail system *with handrail on* each open side (emphasis added).'' OSHA is proposing to correct the cell to reflect the language that OSHA proposed in 2010 (see table on 75 FR 29141) and intended to finalize, as discussed in the summary and explanation section of the 2016 final rule: ''Final paragraph (b)(11)(ii), consistent with . . . proposed paragraph (b)(11)(ii), requires . . .'' (81 FR 82611). This language means that on new stair rail systems, both sides would need handrails. OSHA invites comment on this proposed correction.

OSHA recognizes that some employers may have already relied on the inadvertent error in existing Table D–2 when installing stair rail systems covered by this correction (stair width less than 44 inches, open on both sides). It is not OSHA's intent for any stair rail system installed before the effective date of a new final rule to need modification, so long as that system was in compliance with OSHA requirements at the time it was installed. OSHA is therefore proposing two separate provisions for stairs with two open sides

[1] *Stair rail* or *stair rail system* means a barrier erected along the exposed or open side of stairways to prevent employees from falling to a lower level (as defined in 29 CFR 1910.21).

[2] *Handrail* means a rail used to provide employees with a handhold for support (as defined in 29 CFR 1910.21).

and a width of less than 44 inches: The corrected requirements for new handrails and stair rail systems (located in Table D–2), and a separate provision to retain the current requirements for already existing handrails and stair rail systems. Proposed § 1910.28(b)(11)(ii) would address new stair rail systems through the corrected Table D–2, *Stairway Handrail and Stair Rail System Requirements.* OSHA would add proposed § 1910.28(b)(11)(iii) to maintain the existing requirements for flights of stairs less than 44 inches (1.1 m) wide, with two open sides, and installed before the effective date of a final rule that would result from this rulemaking. Those stairways would be required to have a stair rail system on each open side, but would not need to include a handrail.

With the addition of proposed paragraph (b)(11)(iii), existing paragraph (b)(11)(iii) would be redesignated as (b)(11)(iv) with no change to the regulatory text.

Section 1910.29 Fall Protection Systems and Falling Object Protection—Criteria and Practices

OSHA is proposing to reorganize provisions in § 1910.29(f) to address confusion in the stakeholder community on the application of existing § 1910.29(f)(1)(iii)(A). OSHA has received many questions and requests for letters of interpretation asking when the top rail of a stair rail system may also serve as a handrail (*i.e.,* ''combination'' top rails). In the 2016 rulemaking, OSHA had allowed the top rail of stair rail systems to serve as a handrail when two conditions were met: (1) The height of that stair rail system is not less than 36 inches and not more than 38 inches, as measured at the leading edge of the stair tread to the top surface of the top rail; and (2) the stair rail system was installed before the effective date of the rule (January 17, 2017).[3] However, installations at those height specifications were technically precluded by OSHA's previous standard, which mandated the top rail of a stair rail system to be between 30 and 34 inches. The 2016 final rule did not specifically address combination handrail requirements for stair rail systems that have a top rail height not less than 30 inches (the previous minimum height for a stair rail system) and up to 36 inches. Moreover, OSHA has become aware that employer confusion over that part of the 2016 rulemaking has led to some employers relying on the top rail of stair rail systems as a ''combination'' handrail for various heights at 38 inches or below for installations after January 2017, despite OSHA's new minimum 42-inch requirement for top stair rails.

In light of the employer confusion following the 2016 rulemaking regarding the height requirements for combination top rails, OSHA is proposing to expand the height range in proposed paragraph (f)(1)(ii)(A) to state that the top rail of stair rail systems installed prior to the effective date of a new final rule can serve as a hand rail if that top rail is 30 to 38 inches in height, and meets the other handrail requirements of paragraph (f). OSHA is not proposing to require employers to modify otherwise compliant stair rail systems installed between January 17, 2017, and the date of any final rule resulting from this proposal.

OSHA is also proposing to revise the captions for Figures D–12 and D–13 to clarify that they are depicting only height requirements for handrails and combination handrail and stair rail systems installed before the effective date of a new final rule. They do not depict any other requirements for handrails and stair rail systems contained in § 1910.29(f). OSHA is also proposing to add Figure D–13A to further clarify height requirements for handrails and stair rail systems installed on or after the effective date of a new final rule.

OSHA requests comment on these proposed changes.

IV. Preliminary Economic and Initial Regulatory Flexibility Screening Analysis

Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) require that OSHA estimate the benefits, costs, and net benefits of regulations, and analyze the impacts of certain rules that OSHA promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

In the 2016 rulemaking, OSHA provided these analyses (81 FR 82670). Those analyses would not be impacted by this proposed rule. OSHA does not anticipate any significant effects on the costs or benefits identified in the 2016 rulemaking from the proposed revisions to § 1910.28 and § 1910.29 addressing handrails and stair rail systems. This proposal reorganizes the rule in a clearer, more logical manner and further explains OSHA's intent. Although OSHA proposes to amend § 1910.28 to correct an inadvertent error in the 2016 rule—handrails should have been required on the open side of a stairway—OSHA anticipates that this correction will result in no costs or cost savings. Because the agency had estimated full current compliance (*i.e.,* full current industry practice) with that proposed requirement, costs for that requirement in both the 2016 economic analysis and the economic analysis of the proposal for that rulemaking were zero. Moreover, and as discussed above, OSHA anticipates this proposed rule will not have a significant impact on the benefits of the 2016 standard because it will generally maintain the same level of safety and health protections for workers. The agency requests public comment on this preliminary assessment.

As discussed earlier in this preamble, with respect to § 1910.28(b)(11) Stairways, it is not OSHA's intent for any stair rail system installed before January 17, 2017, to need modification, so long as that system was in compliance with OSHA requirements at the time it was installed. With respect to § 1910.29(f)(1) Handrails and stair rail systems; Height criteria, OSHA did not intend for any of the ''grandfathered'' stair rail systems that had a top rail height between 30 and 38 inches to need to be modified if the stair rail system was installed before January 17, 2017, and it complied with the previous rule. OSHA is therefore proposing to clarify that the top rail of stair rail systems installed prior to January 17, 2017, can serve as a handrail if that top rail is 30 to 38 inches in height and meets the other handrail requirements of paragraph (f). In the economic analysis of the 2016 rule, OSHA did not identify costs for employers to modify existing handrails or stair rail systems in any of those scenarios, so OSHA is not identifying any potential cost savings that might be attributed to the avoidance of those modifications.

OSHA recognizes the possibility that employers who installed a separate handrail on an existing stair rail system incurred compliance costs associated with the regulatory text for § 1910.29(f)(1) Handrails and stair rail systems, as published in the 2016 final rule. OSHA lacks the data to quantify any potential cost savings for employers who would not need to add additional handrails to stair rail systems in accordance with the 2016 rulemaking that effectively precluded combination

[3] OSHA effectively foreclosed the use of the top rail as a handrail for stair rail systems installed after January 17, 2017. OSHA stated in the 2016 final rule, ''. . . because the final rule requires that all stair rail systems installed on or after the effective date, which is January 17, 2017, to be at least 42 inches in height, final paragraph (f)(1)(iii)(A) is only applicable to stair rail systems installed before the effective date'' (81 FR 82630).

stair rails for new installations after January 17, 2017. Therefore, OSHA characterizes any potential cost savings from this proposed rulemaking in qualitative terms and not quantitatively, and the agency requests public comment on this question of potential cost savings from the proposed clarification of the regulatory language for § 1910.29(f)(1) Handrails and stair rail systems.

Because this action will impose no new or additional compliance burden on the affected employers and therefore no new or additional costs, OSHA has determined that the proposed revisions to the standard are economically feasible. OSHA requests public comment on this preliminary assessment.

This proposed rule is not an ''economically significant regulatory action'' under Executive Order 12866 or UMRA, or a ''major rule'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Neither the benefits nor the costs of this proposed rule would exceed $100 million in any given year. Furthermore, because the proposed rule would not impose any costs, OSHA certifies that it would not have a significant impact on a substantial number of small entities.

V. Applicability of Existing National Consensus Standards

Section 6(b)(8) of the Occupational Safety and Health Act of 1970 (''the Act''; 29 U.S.C. 655(b)(8)) requires OSHA to publish ''a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard.'' OSHA included that explanation when it adopted new rules in the 2016 rulemaking (81 FR 82807). This proposed rule would modify two of the provisions adopted in 2016, but does not adopt separate new rules.

VI. OMB Review Under the Paperwork Reduction Act of 1995

This proposal to update and revise the requirements for handrails and stair rail systems in the Walking-Working Surfaces Standards contains no information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1995 (PRA), U.S.C. 3501 *et seq.,* and the implementing regulations at 5 CFR part 1320. The PRA defines ''collection of information'' to mean ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format'' (44 U.S.C. 3502(3)(A)). Under the PRA, a federal agency cannot conduct or sponsor a collection of information unless OMB approves it, and the agency displays a valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number (44 U.S.C. 3512). The information collections related to walking-working surfaces standards for general industry—29 CFR 1910.23(b)(10), 29 CFR 1910.27(b)(1)(i) and (ii), and 29 CFR 1910.28(b)(1)—have been approved under OMB control number 1218–0199. The existing currently approved information collections would not be affected by this proposal and therefore would go forward unchanged. The Department welcomes any comments on this preliminary determination.

VII. Federalism

OSHA reviewed this NPRM in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Any such preemption must be limited to the extent possible.

Under section 18 of the Occupational Safety and Health Act of 1970 (''OSH Act''; U.S.C. 651 *et seq.*), Congress expressly provides that states may adopt, with federal approval, a plan for the development and enforcement of occupational safety and health standards; states that obtain federal approval for such a plan are referred to as ''State-Plan States'' (29 U.S.C. 667). Occupational safety and health standards developed by State-Plan States must be at least as effective in providing safe and healthful employment and places of employment as the federal standards. Subject to these requirements, State-Plan States are free to develop and enforce their own requirements for occupational safety and health standards.

OSHA previously concluded that promulgation of subpart D complies with Executive Order 13132 (81 FR 82975). That analysis applies to this proposed rule, which would clarify several provisions and expand the number of existing stair rail systems exempted from modification requirements; therefore, this proposed rule complies with Executive Order 13132.

VIII. State Plans

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, states and U.S. territories with their own OSHA-approved occupational safety and health plans (''State Plans'') must either amend their standards to be identical or ''at least as effective as'' the new standard or amendment, or show that an existing state standard covering this area is ''at least as effective'' as the new federal standard or amendment (29 U.S.C. 667(c)(2); 29 CFR 1953.5(a)). State Plans' adoption must be completed within six months of the promulgation date of the final federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plans do not have to amend their standards, although OSHA may encourage them to do so.

Of the 28 states and territories with OSHA-approved State Plans, 22 cover public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining six states and territories cover only state and local government employees: Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands.

The proposed amendments to § 1910.28(b), clarifying that a handrail is required on the open side of certain stairways, are important corrections that are necessary for worker protection. OSHA has preliminarily determined that within six months of the rule's final promulgation date, each State Plan would be required to review its standards and revise their standards to include this handrail requirement unless the State Plan can demonstrate that such revisions are not necessary because the existing standards, and the enforcement of the standards, are already at least as effective.

The proposed amendments to § 1910.29(f) expand the existing grandfather provision for previously-installed stair systems, are permissive, and are clarifying in nature without imposing any new requirement. OSHA does not view the proposed amendments as more stringent than the existing standard, so OSHA has preliminarily determined that State

Plans would not be required to adopt the expanded grandfather provision. State Plans States may, however, choose to conform their standards to allow employers this increased flexibility.

OSHA invites comments on these preliminary determinations.

IX. Unfunded Mandates Reform Act

OSHA reviewed this proposed rule according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*) and Executive Order 13132 (64 FR 43255). As discussed above in section IV of this preamble (''Preliminary Economic Analysis and Initial Regulatory Flexibility Screening Analysis''), the agency does not expect the private-sector employers to incur any new costs not previously accounted for in the economic analysis of the 2016 rule. While this proposed rule establishes a federal mandate in the private sector, it is not a significant regulatory action within the meaning of section 202 of the UMRA (2 U.S.C. 1532).

Under voluntary agreement with OSHA, some states enforce compliance with their state standards on public sector entities, and these agreements specify that these state standards must be equivalent to OSHA standards. Thus, although OSHA had included compliance costs for the affected public sector entities in the analysis of the expected impacts associated with the 2016 rulemaking, neither that rulemaking nor this proposal would involve any unfunded mandates being imposed on any state or local government entity. Consequently, this proposed rule does not meet the definition of a ''Federal intergovernmental mandate'' (See section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the agency preliminarily certifies that this proposed rule does not mandate that state, local, and tribal governments adopt new, unfunded regulatory obligations.

X. Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175, (65 FR 67249 (Nov. 9, 2000)) and has determined that it does not have ''tribal implications'' as defined in that order. The proposed rule 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.

List of Subjects in 29 CFR 1910

Falls, Handrails, Occupational safety and health, Stair rail systems, Walking-working surfaces.

XI. Authority and Signature

This document was prepared under the direction of James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health. This action is taken pursuant to sections 29 U.S.C. 653, 655, 657; Secretary of Labor's Order 1–2012 (77 FR 3912 (1/25/2012), and 29 CFR part 1911.

Signed at Washington, DC, on May 13, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

XII. Proposed Regulatory Text

Pursuant to sections 4, 6, and 8 of the OSH Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2007 (72 FR 31159), and 29 CFR part 1911, OSHA proposes to amend subpart D of 29 CFR part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart D—Walking–Working Surfaces

■ 1. The authority citation for part 1910, subpart D, is revised to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 1–2012 (77 FR 3912), and 08–2020 (85 FR 58393), as applicable; and 29 CFR part 1911.

■ 2. Amend § 1910.28 by revising paragraph (b)(11) to read as follows:

§ 1910.28 Duty to have fall protection and falling object protection.

* * * * *

(b) * * *

(11) * * *

(ii) Each flight of stairs, having at least 3 treads and at least 4 risers, installed on or after (date 60 days after the publication date of the final rule) is equipped with stair rail systems and handrails as follows:

TABLE D–2—STAIRWAY HANDRAIL AND STAIR RAIL SYSTEM REQUIREMENTS

Stair width	Enclosed	One open side	Two open sides	With earth built up on both sides
Less than 44 inches (1.1 m)	At least one handrail	One stair rail system with handrail on open side.	One stair rail system with handrail on each open side.	
44 inches (1.1 m) to 88 inches (2.2 m).	One handrail on each enclosed side.	One stair rail system with handrail on open side and one handrail on enclosed side.	One stair rail system with handrail on each open side.	
Greater than 88 inches (2.2 m)	One handrail on each enclosed side and one intermediate handrail located in the middle of the stair.	One stair rail system with handrail on open side, one handrail on enclosed side, and one intermediate handrail located in the middle of the stair.	One stair rail system with handrail on each open side and one intermediate handrail located in the middle of the stair.	
Exterior stairs less than 44 inches (1.1 m).	.....	.....	.....	One handrail on at least one side.

Note to table: The width of the stair must be clear of all obstructions except handrails.

(iii) Each flight of stairs, having at least 3 treads and at least 4 risers, that is less than 44 inches (1.1 m) wide, that has two open sides, and was installed before (date 60 days after the publication date of the final rule) must have a stair rail system on each open side, but a handrail is not required.

(iv) Each ship stairs and alternating tread type stairs is equipped with handrails on both sides.

* * * * *

■ 3. Amend § 1910.29 by revising paragraph (f)(1) to read as follows:

§ 1910.29 Fall protection systems and falling object protection—criteria and practices.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) For stair rail systems installed before (date 60 days after the publication date of the final rule):

(1) The height is not less than 30 inches (76 cm), as measured from the leading edge of the stair tread to the top surface of the top rail; and

(2) The top rail may serve as a handrail only when the height of the stair rail system is not less than 30 inches (76 cm) and not more than 38 inches (97 cm), as measured from the leading edge of the stair tread to the top surface of the top rail (see Figure D–13 of this section).

(B) For stair rail systems installed on or after (date 60 days after the publication date of the final rule), the height is not less than 42 inches (107 cm), as measured from the leading edge of the stair tread to the top surface of the top rail (see Figure D–13A of this section). Stair rail systems installed on or after (date 60 days after the publication date of the final rule), must have a separate handrail that meets the requirements of 29 CFR 1910.29(f)(1)(i).

* * * * *

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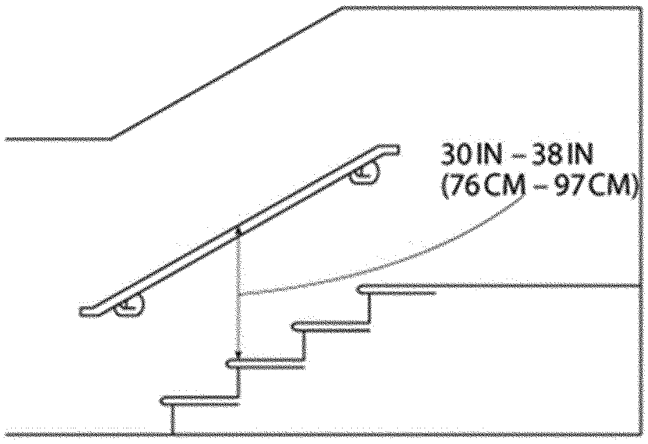

Figure D-12 – Handrail Height Measurement (all installation dates)

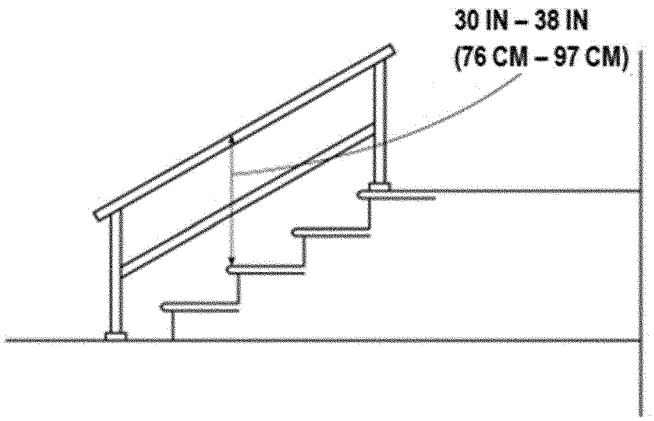

Figure D-13 – Combination Handrail and Stair Rail System Height Measurement for Stair Rail Systems Installed before (date 60 days after the publication date of the final rule)

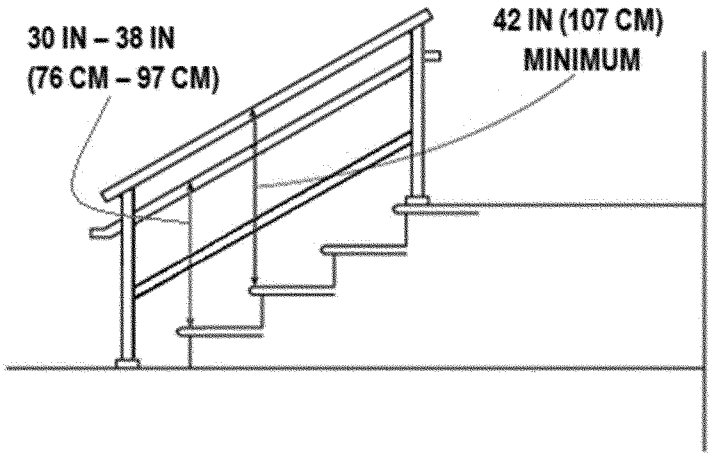

Figure D-13A – Handrail and Stair Rail Height Measurements for Stair Rail Systems

Installed on or after (date 60 days after the publication date of the final rule)

* * * * *

[FR Doc. 2021–10561 Filed 5–19–21; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2019–0001]

RIN 1218–AC93

Hazard Communication Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of informal hearing.

SUMMARY: OSHA is scheduling an informal public hearing on its proposed rule ''Hazard Communication Standard.'' The public hearing will begin September 21, 2021 at 10:00 a.m., Eastern Time (ET). The proposed rule was published in the **Federal Register** on February 16, 2021. The initial public comment period was to end April 19, 2021, but was extended to May 19, 2021, in response to requests from the public.

DATES: *Informal public hearing:* The hearing will begin September 21, 2021, at 10:00 a.m., ET, and will be held virtually using WebEx. If necessary, the hearing will continue from 9:30 a.m. until 5:00 p.m., ET, on subsequent days. Additional information on how to access the informal hearing will be posted when available at *https://www.osha.gov/hazcom/rulemaking.* To testify or question witnesses at the hearing, interested persons must electronically submit their notice by June 18, 2021. In addition, those who request more than ten minutes for their presentation at the informal hearing and those who intend to submit documentary evidence at the hearing must submit the full text of their testimony, as well as a copy of any documentary evidence, no later than August 21, 2021.

ADDRESSES:

Notices of Intent to Appear: Notices of intent to appear at the hearing, along with any submissions and attachments, should be submitted electronically at *https://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing ''all documents and comments'' in the docket (Docket No. OSHA–2019–0001), check the ''proposed rule'' box in the column headed ''Document Type,'' find the document posted on the date of publication of this hearing notice, and click the ''Comment Now'' link. When uploading multiple attachments to *www.regulations.gov,* please number all of your attachments because *www.regulations.gov* will not automatically number the attachments. This will be very useful in identifying all attachments in the preamble. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on *regulations.gov.*

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2019–0001). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments, notices of intent to appear, and other materials submitted in the docket, go to Docket No. OSHA–2019–0001 at *https://www.regulations.gov.* All comments and submissions 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 that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.[1]

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Contact Frank

[1] Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this notice by author name, publication year, and the last four digits of the Document ID.

Meilinger, Director, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information and technical inquiries: Contact Maureen Ruskin, Acting Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1950 or fax: (202) 693–1678; email: *ruskin.maureen@dol.gov.*

For Hearing Inquiries: Contact Janet Carter, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1950; email: *carter.janet@dol.gov.*

SUPPLEMENTARY INFORMATION: On February 16, 2021, OSHA published a Notice of Proposed Rulemaking (NPRM) to modify the Hazard Communication Standard (HCS) to align with the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Revision 7, to address specific issues that have arisen since OSHA last updated the HCS in 2012, and to provide better alignment with other U.S. agencies and international trading partners, without lowering the overall protections of the standard.

OSHA received comments concerning the proposed rule during the comment period, which ended May 19, 2021. Commenters shared information on a variety of topics including proposed definitions of ''release for shipment'' and ''immediate outer container,'' changes to paragraph (d)(1) ''normal conditions of use,'' and clarification of compliance dates. OSHA received two requests for an informal public hearing (Document ID 0276 and 0294).

Informal Public Hearing—Purpose, Rules and Procedures

OSHA invites interested persons to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing. OSHA also welcomes presentation of data and documentary evidence that will provide the agency with the best available evidence to use in developing the final rule.

Pursuant to 29 CFR 1911.15(a) and 5 U.S.C. 553(c), members of the public have an opportunity at the informal public hearing to provide oral testimony and evidence on issues raised by the proposal. An administrative law judge (ALJ) will preside over the hearing and will resolve any procedural matters relating to the hearing.

OSHA's regulation governing public hearings (29 CFR 1911.15) establishes the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ and questioning of witnesses is allowed on crucial issues, the proceeding is largely informal and essentially legislative in purpose. Therefore, the hearing provides interested persons with an opportunity to make oral presentations in the absence of rigid procedures that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the Federal Rules of Evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. Accordingly, questions of relevance, procedure, and participation generally will be resolved in favor of developing a clear, accurate, and complete record.

Conduct of the hearing will conform to 29 CFR 1911.15. In addition, pursuant to 29 CFR 1911.4, the Acting Assistant Secretary may, on reasonable notice, issue additional or alternative procedures to expedite the proceedings, to provide greater procedural protections to interested persons, or to further any other good cause consistent with applicable law. Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the proposal, the ALJ has the responsibility and authority necessary to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure a full and fair hearing, the ALJ has the power to regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine presentations to matters pertinent to the issues the proposed rule raises; use appropriate means to regulate the conduct of persons present at the hearing; question witnesses and permit others to do so; limit the time for such questioning; and leave the record open for a reasonable time after the hearing for the submission of additional data, evidence, comments, and arguments from those who participated in the hearing (29 CFR 1911.16).

At the close of the hearing, there will be a post-hearing comment period for interested persons who filed a timely notice of intention to appear at the hearing, during which those persons may submit final briefs, arguments, summations, and additional data and information to OSHA.

Notice of Intention To Appear at the Hearing

Interested persons who intend to participate in and provide oral testimony or documentary evidence at the hearing must file a written notice of intention to appear prior to the hearing. To testify or question witnesses at the hearing, interested persons must electronically submit their notice by June 18, 2021. The notice must provide the following information:

Name, address, email address, and telephone number of each individual who will give oral testimony;

Name of the establishment or organization each individual represents, if any;

Occupational title and position of each individual testifying;

Approximate amount of time required for each individual's testimony;

A brief statement of the position each individual will take with respect to the issues raised by the proposed rule; and

A brief summary of documentary evidence each individual intends to present. Individuals who request more than 10 minutes to present their oral testimony at the hearing or who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than August 21, 2021.

The agency will review each submission and determine if the information it contains warrants the amount of time the individual requested for the presentation. If OSHA believes the requested time is excessive, the agency will allocate an appropriate amount of time for the presentation. The agency also may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements, and may request that the participant return for questioning at a later time. Before the hearing, OSHA will notify participants of the time the agency will allow for their presentation and, if less than requested, the reasons for its decision. In addition, before the hearing, OSHA will provide the hearing procedures and hearing schedule to each participant who filed a notice of intention to appear. OSHA emphasizes that the hearing is open to the public; however, only individuals who file a notice of intention to appear may question witnesses and participate fully at the hearing. If time permits, and at the discretion of the ALJ, an individual who did not file a notice of intention to appear may be allowed to testify at the hearing, but for no more than 10 minutes.

Certification of the Hearing Record and Agency Final Determination

Following the close of the hearing and the post-hearing comment periods, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The

record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. The ALJ, however, will not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review all the evidence received into the record and will issue the final rule based on the record as a whole.

Authority and Signature

This document was prepared under the direction of James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); 5 U.S.C. 553; section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549, reprinted at 29 U.S.C.A. 655 Note); section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); section 1031, Housing and Community Development Act of 1992 (42 U.S.C. 4853); section 126, Superfund Amendments and Reauthorization Act of 1986, as amended (reprinted at 29 U.S.C.A. 655 Note); Secretary of Labor's Order No. 8–2020 (85 FR 58383–94); and 29 CFR part 1911.

Signed at Washington, DC, on May 12, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–10523 Filed 5–19–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 17, 18 and 21

RIN 2900–AR04

Vocational Rehabilitation and Employment (VR&E) Program: Name Change

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the regulations pertaining to the name of the Chapter 31 Vocational Rehabilitation and Employment program. VA provides benefits and services under the program name of ''Vocational Rehabilitation and Employment''. VA is proposing to amend the name to ''Veteran Readiness and Employment'' (VR&E). VA further proposes that the references to the position of ''Vocational Rehabilitation and Employment Officer'' be amended to ''Veteran Readiness and Employment Officer'' and the position of ''Director of Vocational Rehabilitation and Employment'' be amended to ''Executive Director of Veteran Readiness and Employment''.

DATES: Comments must be received on or before July 19, 2021.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to Department of Veterans Affairs, Veteran Readiness and Employment (28), 810 Vermont Avenue NW, Washington, DC 20420. Comments should indicate that they are submitted in response to RIN 2900–AR04—Vocational Rehabilitation and Employment (VR&E) Program: Name Change. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Allison Bernheimer, Policy Analyst, Veteran Readiness and Employment Services (28), 810 Vermont Avenue NW, Washington, DC 20420, *allison.bernheimer@va.gov,* (202) 461–9600. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 3100, the purpose of the Chapter 31 Vocational Rehabilitation and Employment program is to provide for all services and assistance necessary to enable Veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent possible, to become employable and to obtain and maintain suitable employment. VA proposes to change the program name from ''Vocational Rehabilitation and Employment'' to ''Veteran Readiness and Employment''.

We begin by proposing to amend 38 CFR 3.341(c) and 3.342(c)(1) by replacing references to ''Vocational Rehabilitation and Employment'' with ''Veteran Readiness and Employment (VR&E)'' and to amend 38 CFR 17.37(e) by replacing a reference to ''vocational rehabilitation'' with ''Veteran Readiness and Employment (VR&E)''. We also propose to amend 38 CFR part 18, Appendix A to Subpart A, Appendix A to Subpart D, and Appendix A to Subpart E by replacing all references to ''vocational rehabilitation'' with ''Veteran Readiness and Employment''. We also propose to amend the title of 38 CFR part 21 from ''Vocational Rehabilitation and Education'' to ''Veteran Readiness and Employment and Education'' and the title of part 21, subpart A from ''Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31'' to ''Veteran Readiness and Employment Under 38 U.S.C. Chapter 31''.

The term ''vocational'' may be misinterpreted as referring to a participant who is undergoing training in a skill or trade. For a Service member or Veteran needing assistance to become independent in daily living or to increase the individual's potential to return to work by obtaining services to lessen or accommodate the effects of a disability(ies), the term ''vocational'' may be misconstrued in regard to the types of services available. Furthermore, VR&E provides training towards employment goals through a wide variety of programs beyond vocational schools for individuals seeking benefits and services to become employable. Training is provided to the level generally recognized as necessary for entry into employment in a suitable occupational objective. VR&E's focus includes successful employment outcomes, while still providing services aimed at readjustment and preparation through retraining. The term ''vocational'' may have deterred individuals from applying for benefits and services. VR&E's purpose is to enhance a Service member or Veteran's job-readiness and job-seeking skills to increase the Service member or Veteran's ability to obtain and maintain employment. The Service member or Veteran is the most important part of the mission; therefore, VR&E Service proposes replacing ''vocational'' with ''Veteran'' in the program name for a more Service member and Veteran friendly approach to providing benefits and services.

VR&E Service recently consulted various stakeholders regarding replacing the term ''rehabilitation'' in the program name. This consultation yielded insights, using a human-centered design approach, from vocational rehabilitation counselors, Service members, Veterans, Veterans Service Organizations, and VR&E claimants. Individuals from each service branch and gender from across the Nation were included to ensure a comprehensive and inclusive data pool. Essentially, we determined that the term ''rehabilitation'' has a negative connotation, including the perception of it being related to drug and alcohol addiction treatment, which may inhibit some individuals from taking advantage of VR&E benefits and services. Therefore, VR&E Service proposes to replace ''rehabilitation'' with ''readiness''. The new name is more in

line with what Service members and Veterans already understand from their military service. The VR&E acronym will remain unchanged.

For purposes of maintaining consistency with the program's name change in 38 CFR chapter 1, part 21, we propose to amend all references to Vocational Rehabilitation and Employment Officer to read as Veteran Readiness and Employment Officer.

The VR&E Officer manages a VR&E division within a Regional Office and is responsible for providing administrative and technical direction and professional leadership to a staff of Vocational Rehabilitation Counselors (VRC), Employment Coordinators (EC), and administrative support staff members. (We plan to retain the current title for VRCs because it is based on the credentialing that these individuals receive.) VR&E Officers provide internal policy direction and administrative expertise in all phases of the rehabilitation activities. The VR&E Officer works closely with VRCs, ECs, Service members, and Veterans to resolve complex issues regarding services and benefits. The VR&E Officer has specific authorities to review and approve program costs throughout the life of a rehabilitation plan. The change in title would align it more with the overall mission of the program.

To make the language in 38 CFR chapter 1, part 21 consistent with the changes above, we also propose to amend the reference to the Director, Vocational Rehabilitation and Employment Service to read as the Executive Director, Veteran Readiness and Employment Service.

The Executive Director oversees the program by developing policies and procedures, formulating budgets, developing workload management systems, supporting Regional Office staff with training programs, and providing oversight over and developing the structure of the office staff. The Executive Director supports the mission, vision, strategic direction, and enterprise thinking for all program services and also serves as the chief point of contact for Congress and all Federal agencies on any matters related to the program. The Executive Director must approve extensions for specific rehabilitation plans and waivers for repayment of supplies in certain instances. The change in title would align it more with the overall mission of the program.

Executive Orders 12866 and 13563

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

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its Regulatory Impact Analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

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

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.116, Vocational Rehabilitation for Disabled Veterans; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 18

Aged, Civil Rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 9, 2021 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3, part 17; part 18, part 21.

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.341 [Amended]

■ 2. In § 3.341 paragraph (c) removing in the second sentence the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 3.342 [Amended]

■ 3. In § 3.342 paragraph (c)(1) removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

PART 17—MEDICAL

■ 4. The authority citation for part 17 continues to read as follows:

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

§ 17.37 [Amended]

■ 5. In § 17.37(e) removing the words ''vocational rehabilitation'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General

■ 6. The authority citation for part 18, subpart A continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1) and the laws referred to in Appendix A.

Appendix A to Subpart E of Part 18 [Amended]

■ 7. In Appendix A to Subpart A, sentence number 4, removing the words ''vocational rehabilitation'' and adding in their place the words ''Veteran Readiness and Employment''.

Subpart D—Nondiscrimination on the Basis of Handicap

■ 8. The authority citation for part 18, subpart D continues to read as follows:

Authority: 29 U.S.C. 706, 794.

Source: 45 FR 63268, Sept. 24, 1980, unless otherwise noted.

Appendix A to Subpart D of Part 18 [Amended]

■ 9. In Appendix A to Subpart D, sentence number 10, removing the words ''vocational rehabilitation'' and adding in their place the words ''Veteran Readiness and Employment''.

Subpart E—Nondiscrimination on the Basis of Age

■ 10. The authority citation for part 18, subpart E continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.;* 45 CFR part 90 (1979).

Source: 50 FR 34133, Aug. 23, 1985, unless otherwise noted.

Appendix A to Subpart E of Part 18 [Amended]

■ 11. In Appendix A to Subpart E, sentence number 8, removing the words ''Vocational Rehabilitation;'' and adding in their place the words ''Veteran Readiness and Employment;''.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

■ 12. The authority citation for part 21, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

Source: 49 FR 40814, Oct. 18, 1984, unless otherwise noted.

■ 13. Revise the heading of Part 21 to read as forth above:

PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

Appendix A to Subpart A of Part 21 [Amended]

■ 14. Revise the heading of Subpart A to read as follows:

Subpart A—Veteran Readiness and Employment Under 38 U.S.C. Chapter 31

■ 15. The authority citation for part 21, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

Source: 49 FR 40814, Oct. 18, 1984, unless otherwise noted.

■ 16. Revise the undesignated heading immediately before § 21.1 to read as follows:

Veteran Readiness and Employment Overview

§ 21.35 [Amended]

■ 17. Amend § 21.35 by:

■ a. Removing in paragraph (k)(1),in the second sentence the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

■ b. Removing in paragraphs (k)(2) and (7) in the second sentences,the words ''Vocational Rehabilitation and Employment'' and adding in their place the word ''VR&E''.

§ 21.42 [Amended]

■ 18. Amend § 21.42 by:

■ a. Removing in paragraph (c)(1) the words ''vocational rehabilitation'' and adding, in their place, the words ''Veteran Readiness and Employment (VR&E)''.

■ b. Removing in paragraph (c)(2)(ii), the words ''vocational rehabilitation and employment'' and adding in their place the words ''VR&E''.

■ c. Removing in paragraph (c)(6) the words ''vocational rehabilitation'' and adding in their place the ''VR&E''

§ 21.53 [Amended]

■ 19. Amend § 21.53 by:

■ a. Removing in paragraph (f), the words ''Vocational Rehabilitation and Employment (VR&E) Officer'' and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''.

■ b. Removing in paragraph (g), the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''VR&E''.

§ 21.57 [Amended]

■ 20. In § 21.57 paragraph (d), removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.60 [Amended]

■ 21. Amend § 21.60 by:

■ a. Removing in paragraph (b)(1), the words ''VR&E (Vocational Rehabilitation and Employment)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

■ b. Removing in paragraph (c)(1), the words ''VR&E (Vocational Rehabilitation and Employment)'' and adding in their place the word ''VR&E''.

§ 21.62 [Amended]

■ 22. In § 21.62 paragraph (a), removing the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.72 [Amended]

■ 23. In § 21.72 paragraph (c), removing the words ''Vocational Rehabilitation and Employment Officer'' and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''.

§ 21.74 [Amended]

■ 24. In § 21.74 paragraph (c)(2), removing the words ''Vocational Rehabilitation and Employment (VR&E) Officer'' and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''.

§ 21.78 [Amended]

■ 25. In § 21.78 paragraph (d), removing the words ''Vocational Rehabilitation and Employment Officer'' and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''.

§ 21.80 [Amended]

■ 26. In § 21.80 paragraph (a)(1), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.100 [Amended]

■ 27. Amend § 21.100 by:
■ a. Removing in paragraph (a), the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.
■ b. Removing in paragraph (d)(1), the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the word ''VR&E''.

§ 21.155 [Amended]

■ 28. In § 21.155 paragraph (c), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.162 [Amended]

■ 29. In § 21.162 paragraph (a)(4), removing the words ''VR&E Officer'' and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''.

§ 21.180 [Amended]

■ 30. Amend § 21.180 by:
■ a. Removing in paragraph (a)(1), the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.
■ b. Removing in paragraph (c), the words ''VR&E (Vocational Rehabilitation and Employment) Officer'' and adding in their place the words ''VR&E Officer''.

§ 21.182 [Amended]

■ 31. In § 21.182 paragraph (b)(2), removing the words ''VR&E (Vocational Rehabilitation and Employment)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.184 [Amended]

■ 32. In § 21.184 paragraph (c)(2), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.198 [Amended]

■ 33. In § 21.198 paragraph (b)(7), removing the words ''Vocational Rehabilitation and Employment (VR&E) Officer'' and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''.

§ 21.222 [Amended]

■ 34. In § 21.222 paragraph (c)(3), removing the words ''Director, VR&E Service'' and adding in their place the words ''Executive Director, Veteran Readiness and Employment (VR&E) Service''.

§ 21.256 [Amended]

■ 35. In § 21.256 paragraph (d), removing the words ''VR&E Officer'' and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''.

§ 21.258 [Amended]

■ 36. Amend § 21.258 by:
■ a. Removing the words ''VR&E Officer'' wherever it appears and adding in their place the words ''Veteran Readiness and Employment (VR&E) Officer''; and
■ b. Removing the words ''Director, VR&E Service'' wherever it appears and adding in their place the words ''Executive Director, VR&E Service''.

§ 21.274 [Amended]

■ 37. In § 21.274 paragraph (e), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.292 [Amended]

■ 38. In § 21.292 paragraph (d), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.299 [Amended]

■ 39. In § 21.299 paragraph (d)(1), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.362 [Amended]

■ 40. In § 21.362 paragraph (b)(2), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.382 [Amended]

■ 41. In § 21.382 paragraph (a), removing the word ''VR&E'' and adding in its place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.390 [Amended]

■ 42. In § 21.390, introductory text of paragraph (c) removing the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.410 [Amended]

■ 43. In § 21.410, removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.430 [Amended]

■ 44. In § 21.430, introductory text of paragraph (c) removing the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.3022 [Amended]

■ 45. In § 21.3022 paragraph (b), removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.3104 [Amended]

■ 46. Amend § 21.3104 by:
■ a. Removing in paragraph (a), the words ''Vocational Rehabilitation and Employment'' and add in their place the words ''Veteran Readiness and Employment (VR&E)''.
■ b. Removing in paragraph (b), the words ''Vocational Rehabilitation and Employment'' and adding in their place the word ''VR&E''.

§ 21.3303 [Amended]

■ 47. Amend § 21.3303 by:
■ a. Removing in paragraph (a), in the second sentence the words ''Director, Vocational Rehabilitation and Employment Service'' and adding in their place, the words ''Executive Director, Veteran Readiness and Employment (VR&E) Service''.
■ b. Removing in paragraph (a), in the third sentence the words ''Director, Vocational Rehabilitation and Employment Service'' the second place they appear and adding in their place the words ''Executive Director, VR&E Service''.

§ 21.3307 [Amended]

■ 48. In § 21.3307 paragraph (c), removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.3344 [Amended]

■ 49. In § 21.3344 paragraph (e)(1)(i), removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.4001 [Amended]

■ 50. In § 21.4001 paragraph (g), removing the words ''Director, Vocational Rehabilitation and Employment Service'' and adding in their place the words ''Executive Director, Veteran Readiness and Employment (VR&E) Service''.

§ 21.4022 [Amended]

■ 51. In § 21.4022 paragraph (b), removing the words ''Vocational Rehabilitation and Employment Program'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.4232 [Amended]

■ 52. In § 21.4232 paragraph (d), removing the words ''Director, Vocational Rehabilitation and Employment Service'' and adding in their place the words ''Executive Director, Veteran Readiness and Employment (VR&E) Service''.

§ 21.4250 [Amended]

■ 53. In § 21.4250 paragraph (c), removing the words ''Director, Vocational Rehabilitation and Employment Service'' and adding in their place the words ''Executive Director, Veteran Readiness and Employment (VR&E) Service''.

§ 21.5022 [Amended]

■ 54. In § 21.5022 paragraph (a)(1)(ii), removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.6050 [Amended]

■ 55. In § 21.6050 paragraph (e), removing the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.6052 [Amended]

■ 56. In § 21.6052 paragraph (c) removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.6054 [Amended]

■ 57. In § 21.6054 paragraph (b), removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.6100 [Amended]

■ 58. In § 21.6100, in the second sentence removing the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.6410 [Amended]

■ 59. In § 21.6410, in the second sentence removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.6509 [Amended]

■ 60. In § 21.6509 paragraph (d), removing the words ''Vocational Rehabilitation and Employment (VR&E)'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.7143 [Amended]

■ 61. In § 21.7143 paragraph (a)(1)(i), removing the words ''Vocational Rehabilitation and Employment'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.7642 [Amended]

■ 62. In § 21.7642(a)(2), removing the words ''Vocational Rehabilitation and Employment'' and addinig in their place the words ''Veteran Readiness and Employment (VR&E)''.

§ 21.8010 [Amended]

■ 63. Amend § 21.8010 by removing in the definition for VR&E, the words ''Vocational Rehabilitation and Employment'' and adding, in their place, the words ''Veteran Readiness and Employment''.

§ 21.9690 [Amended]

■ 64. In § 21.9690 paragraph (a)(5), removing the words ''Vocational Rehabilitation and Employment Program'' and adding in their place the words ''Veteran Readiness and Employment (VR&E)''.

[FR Doc. 2021–08555 Filed 5–19–21; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0573; FRL–10023–94–Region 9]

Air Plan Approval; California; Mojave Desert Air Quality Management District, Placer County Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD), Placer County Air Pollution Control District (PCAPCD) and the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of: Volatile organic compounds (VOCs) and particulate matter (PM) from metal coating operations. We are proposing to approve local rules and rescissions to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before June 21, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0573 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3024 or by email at *lazarus.arnold@epa.gov.*

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

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I. The State's Submittal

A. What rules and rule rescissions did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	1115	Metal Parts & Products Coating Operations	June 8, 2020	July 24, 2020.
PCAPCD	102	Definitions	June 11, 2020	July 24, 2020.
SCAQMD	1107	Coating of Metal Parts & Products	February 7, 2020	July 24, 2020

In addition to replacing the previous versions of the submitted rules listed in Table 1, the EPA is proposing to rescind SCAQMD Rule 1107 as it applies to the Riverside County portion of the MDAQMD, as requested by CARB.[1]

On November 24, 2020 the EPA determined that the submittal for MDAQMD Rule 1115, PCAPCD Rule 102, and SCAQMD Rule 1107 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of MDAQMD Rule 1115 into the SIP on February 27, 2020 (85 FR 11812); we approved an earlier version of PCAPCD Rule 102 into the SIP on January 31, 2013 (78 FR 6736); and we approved an earlier version of SCAQMD Rule 1107 into the SIP on November 24, 2008 (73 FR 70883).

C. What is the purpose of the submitted rule revisions and rule rescissions?

Emissions of VOCs contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. PCAPCD Rule 102 is a definition rule that provides clarity for rules in the District. MDAQMD Rule 1115 and SCAQMD Rule 1107 control VOCs emitted from coating operations associated with metal parts and products. Rules 1107 and 1115 were revised to address the reasonably available control technology (RACT) requirement. The EPA's technical support documents (TSDs) have more information about these rules.

The rescissions remove the replaced versions of the submitted rules, and also remove the obsolete requirements found in an older version of SCAQMD Rule 1107 within MDAQMD's boundaries.[2]

II. The EPA's Evaluation and Action'

A. *How is the EPA evaluating the rules and rescissions?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)).

The MDAQMD regulates an ozone nonattainment area classified as Severe for the 1997, 2008 and 2015 8-hour ozone national ambient air quality standard (NAAQS) (40 CFR 81.305). Therefore, these rules must implement RACT. The SCAQMD regulates an ozone nonattainment area classified as Extreme for the 1997, 2008 and 2015 8-hour ozone NAAQS (40 CFR 81.305). Therefore, these rules must implement RACT. The PCAPCD regulates an ozone nonattainment area classified as Severe for the 1997 and 2008 8-hour ozone NAAQS and Moderate for the 2015 8-hour ozone NAAQS (40 CFR 81.305). The PCAPCD must implement RACT for rules that are covered by a CTG document as well as each major source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)), however definitions rules are administrative and RACT does not apply.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

[1] CARB's rescission request cites to four Code of Federal Regulations (CFR) provisions for SCAQMD Rule 1107; however, since three of the CFR provisions are previous versions of the Rule that were replaced by more recent versions, and are therefore no longer in the SIP, EPA is interpreting this as a request to remove the latest (and only) version of SCAQMD Rule 1107 applicable in the Riverside County portion of the MDAQMD—namely the version submitted on May 13, 1993, and listed at 40 CFR 52.220(c)(193)(i)(A)(1).

[2] When the Palo Verde portion of Riverside County left the SCAQMD and became part of the MDAQMD, it kept the SCAQMD rules in place. The MDAQMD now has an updated district-wide rule coving the same source category as SCAQMD Rule 1107, namely MDAQMD Rule 1115. Accordingly, MDAQMD has requested to remove the vestigial SCAQMD rule in an effort to simplify and clarify the SIP for this region.

4. ''Control of Volatile Organic Emissions from Existing Stationary Sources -Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–15, June 1978).
5. ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings'' (EPA–453/R–08–003, September 2008).

B. Do the rules and rescissions meet the evaluation criteria?

These rules meet CAA requirements and are consistent with relevant guidance regarding enforceability, and SIP revisions. The TSDs have more information on our evaluation.

C. The EPA's Recommendation to Further Improve the Rules

The MDAQMD Rule 1115 TSD includes a recommendation for the next time the MDAQMD modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. The EPA also proposes to rescind the current SIP-approved versions of the submitted rules, and the version of SCAQMD Rule 1107 that is currently in the SIP for the Riverside County portion of the MDAQMD, because these rules will be replaced by the updated rules we are proposing to approve. We will accept comments from the public on this proposal until June 21, 2021. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD the PCAPCD and the SCAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 14, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–10613 Filed 5–19–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0296; FRL–10023–64–Region 9]

Air Plan Approval; California; Los Angeles-South Coast Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD or ''District'') portion of the California State Implementation Plan (SIP). We are also proposing to determine that the submitted SIP revision fulfills the District's and the State's commitment to adopt and submit a specific enforceable contingency measure to address Clean Air Act (CAA) requirements for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2012 annual $PM_{2.5}$ NAAQS. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before June 21, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0296 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3964 or by email at *vagenas.ginger@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was amended by the local air agency and submitted by the California Air Resources Board (CARB, or ''State''). Subsequent to the submittal of SCAQMD Rule 445, the District and CARB excluded subdivision (k), ''Penalties,'' from the SIP submission.[1]

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule	Amended	Submitted
SCAQMD	445	Wood-Burning Devices, (except paragraph (k), penalties).	October 27, 2020	October 29, 2020.

On April 29, 2021, the submittal for SCAQMD Rule 445 became complete by operation of law under CAA section 110(k)(1)(B).

B. Are there other versions of this rule?

We approved an earlier version of Rule 445 into the SIP on September 26, 2013.[2] On June 5, 2020, the SCAQMD adopted revisions to the SIP-approved version of Rule 445 to add provisions addressing the contingency measure requirement in CAA section 172(c)(9) for $PM_{2.5}$. CARB submitted Rule 445, as amended June 5, 2020, to the EPA on October 21, 2020.[3] The District subsequently adopted additional revisions to Rule 445 and CARB submitted the rule, as amended October 27, 2020, to the EPA on October 29, 2020.[4] The October 27, 2020 version of Rule 445 contains additional ozone-related provisions in paragraph (g) and supersedes Rule 445, as amended June 5, 2020. We are proposing to approve Rule 445, as amended October 27, 2020, except for the ozone-related provision in paragraph (g), which we are not acting on at this time, and the penalty provision in paragraph (k) of the rule, which the District and CARB have excluded from the SIP submission. If we take final action to approve all other portions of Rule 445, as amended October 27, 2020, these portions of the rule will replace the previously approved version of Rule 445 in the SIP.

C. What is the purpose of the submitted rule revisions?

On November 9, 2020, the EPA approved portions of California's SIP submission to address the CAA's Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS in the South Coast nonattainment area (''2016 $PM_{2.5}$ Plan'') and, as part of this action, conditionally approved the contingency measure element of the 2016 $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for the 2006 $PM_{2.5}$ NAAQS and the 2012 $PM_{2.5}$ NAAQS.[5] Our conditional approval was based on commitments from SCAQMD and CARB to develop, adopt, and submit specific revisions to Rule 445 to meet the attainment contingency measure requirement for the 2006 $PM_{2.5}$ NAAQS and the reasonable further progress (RFP) contingency measure requirement for the 2012 $PM_{2.5}$ NAAQS in the South Coast by the earliest of certain specified dates. The District adopted the identified revisions to Rule 445 on June 5, 2020, and retained them unchanged in the October 27, 2020 version of the rule. CARB's submission of Rule 445, as amended October 27, 2020, for incorporation into the SIP fulfills the State's and District's commitments that had provided the basis for the EPA's conditional approval of the contingency measure element of the 2016 $PM_{2.5}$ Plan, thus enabling the EPA to convert the conditional approval into a full approval. Our proposed rulemaking on the 2016 $PM_{2.5}$ Plan contains a detailed discussion of our rationale for conditionally approving the contingency measure element of this plan.[6]

The District's October 27, 2020 revisions to Rule 445 include a new contingency measure provision in paragraph (g) to be implemented upon a failure to meet an RFP requirement for an applicable ozone NAAQS or a failure to attain an applicable ozone NAAQS. We are not acting on paragraph (g) of Rule 445 at this time and will evaluate this provision for compliance with applicable CAA requirements in a subsequent rulemaking.

Finally, as part of our November 9, 2020 final action on the 2016 $PM_{2.5}$ Plan, the EPA also reclassified the South Coast to Serious nonattainment for the 2012 annual $PM_{2.5}$ NAAQS. This action triggered requirements for the State to submit, among other plan components, provisions to implement best available

[1] Letter dated April 9, 2021, from Sarah Rees, Ph.D., Deputy Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB and Elizabeth Adams, Air and Radiation Division Director, EPA Region IX, Subject: ''Request to Exclude Subdivision Rule 445(k) [Penalties] From the SIP Revision,'' and letter dated April 26, 2021, from Michael T. Benjamin, Division Chief, Air Quality Planning and Science Division, CARB, to Elizabeth Adams, Air and Radiation Division Director, EPA Region IX.

[2] 78 FR 59249.

[3] Rule 445, as amended June 5, 2020, is included in the docket for this rulemaking.

[4] Rule 445, as amended October 27, 2020, is included in the docket for this rulemaking.

[5] 85 FR 71264.

[6] 85 FR 40026 (July 2, 2020).

control measures (BACM), including best available control technology (BACT), to the EPA no later than June 9, 2022.[7] We are not evaluating Rule 445 for compliance with BACM requirements at this time and will address the BACM requirements that apply to the South Coast area in subsequent rulemakings.

II. The EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and RFP or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Additionally, we are evaluating Rule 445 to determine whether it fulfills the commitments made by the District and the State to submit a revised rule meeting the requirements of CAA section 172(c)(9) and the regulatory provisions of 40 CFR 51.1014 for contingency measures. Specifically, the District committed (1) to modify Rule 445 to lower the wood burning curtailment threshold upon any of the four EPA determinations (*i.e.,* ''findings of failure'') listed in 40 CFR 51.1014(a), and (2) to submit the revised rule to the EPA within one year of the EPA's final action conditionally approving the contingency measure element of the 2016 $PM_{2.5}$ Plan or within 60 days of a determination by the EPA that the South Coast area failed to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date, which ever occurred sooner.[8] Additionally, CARB committed to submit the revised District rule to the EPA as a SIP revision by the earlier of these two dates.[9]

B. Does the rule meet the evaluation criteria?

Rule 445, as amended October 27, 2020, is enforceable and adds new, lower mandatory wood-burning curtailment provisions in section (f) to be implemented as contingency measures upon a determination by the EPA that any of the four ''findings of failure'' listed under 40 CFR 51.1014(a) has occurred. These new provisions and related revisions strengthen the SIP and do not interfere with applicable requirements concerning attainment and RFP or other CAA requirements.

In addition, the SIP submittal fulfills the District's and the State's commitment to adopt and submit a specific enforceable contingency measure to address the requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for the 2006 24-hour $PM_{2.5}$ NAAQS and the 2012 annual $PM_{2.5}$ NAAQS. CARB submitted the revised rule to the EPA on October 29, 2020, within 60 days of the EPA's September 16, 2020 finding that the South Coast area had failed to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date.[10]

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve all but paragraphs (g) and (k) of Rule 445, as amended October 27, 2020, based on our conclusion that the rule fulfills CAA requirements for enforceability and SIP revisions. The EPA also proposes to convert our conditional approval of the contingency measure element of the 2016 $PM_{2.5}$ Plan, as found in 40 CFR 52.248(k), to a full approval. We are not acting on paragraphs (g) and (k) of Rule 445 and are not evaluating the rule for compliance with BACM requirements at this time. We will accept comments from the public on this proposal until June 21, 2021. If we take final action to approve the submitted rule, our final action will incorporate this rule, except for paragraphs (g) and (k), into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference all but paragraphs (g) and (k) of the SCAQMD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

[7] Id. at 71268.

[8] 85 FR 71264, 71265 (November 9, 2020). For a detailed discussion of the basis for our conditional approval, see 85 FR 40026, 40049–40050 (July 2, 2020).

[9] 85 FR 71264, 71265.

[10] 85 FR 57733 (September 16, 2020).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 11, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–10512 Filed 5–19–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0716; FRL–10023–92–Region 4]

Air Plan Approval; North Carolina; Monitoring: Recordkeeping: Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the North Carolina State Implementation Plan (SIP) submitted through the North Carolina Division of Air Quality (NCDAQ) on October 9, 2020. The SIP revision seeks to modify the State's monitoring, recordkeeping, and reporting regulations by adding one definition, adding references to approved testing methods, updating the reference format, and making minor changes to general formatting and language use for clarity purposes. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before June 21, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0716 at *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 *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, 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. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 2020, North Carolina submitted changes to the North Carolina SIP for EPA approval. EPA is proposing to approve changes to the following SIP-approved regulations under 15A North Carolina Administrative Code Subchapter 02D,[1] Section .0600, Monitoring: Recordkeeping: Reporting: Rule .0601, *Purpose and Scope;* Rule .0602, *Definitions;* Rule .0604, *Exceptions to Monitoring and Reporting Requirements;* Rule .0605, *General Recordkeeping and Reporting Requirements;* and Rule .0606, *Sources Covered by Appendix P of 40 CFR part 51.*[2]

II. EPA's Analysis of North Carolina's Submittal

The changes that are the subject of this proposed rulemaking make revisions to monitoring, recordkeeping, and reporting regulations under Subchapter 2D of the North Carolina SIP. Specifically, they revise the SIP by adding one definition, adding references to approved testing methods, updating the reference format, and making minor changes to general formatting and language use for clarity purposes. EPA is proposing to find that the changes do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement. Detailed descriptions of the changes are below:

1. Rule .0601, *Purpose and Scope* is revised to make clarifying edits to the rule text in the form of minor wording changes and an update to the format of references.

2. Rule .0602, *Definitions* is revised to reformat the definition of ''Emission standard'' and clarify that the term relates to State rules or federal regulations, to add a definition for the term ''Good operation and maintenance,'' [3] to make minor wording, spelling, and grammatical updates to the rule text, and to update the format of references.

3. Rule .0604, *Exceptions to Monitoring and Reporting Requirements* is revised to make clarifying edits to the rule text regarding monitoring requirements during system malfunctions and to clarify that operation and maintenance practices for monitoring systems may be specified by the manufacturer, federal regulation, rule, or a permit condition. In addition, the revisions include a minor word change and other changes to update the format of references.

4. Rule .0605, *General Recordkeeping and Reporting Requirements* is revised to make minor updates and minor wording changes to the rule text and to update the format of references.

5. Rule .0606, *Sources Covered by Appendix P of 40 CFR part 51* is revised to make minor changes to punctuation and rule text, update the format of references, and clarify how compliance with the sulfur dioxide and nitrogen oxide emissions standards is determined. Specifically, the language is revised to clarify that average hourly values shall be calculated based on a minimum of four data points, with one data point in each of the 15-minute quadrants of the hour, and to clarify that this data requirement does not apply to opacity monitoring, which is based upon six-minute time periods, as stipulated at paragraph .0606(c). In addition, paragraph .0606(f) is revised to clarify that the owner or operator of the source shall conduct a daily zero and span check of a continuous emissions monitoring system.

Lastly, Method 6C and Method 7E of 40 CFR part 60, Appendix A, are being added to paragraphs .0606(i) and (j), respectively, as approved testing methods for determining compliance with the emissions standards for sulfur

[1] In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as ''Subchapter 2D Air Pollution Control Requirements.''

[2] The State submitted the SIP revisions following the readoption of several air regulations, including .0601, .0602, .0604, .0605, and .0606, pursuant to North Carolina's 10-year regulatory readoption process at North Carolina General Statute 150B–21.3A.

[3] This term is defined as follows: ''Good operation and maintenance means minimizing air pollutant emissions from air pollution control equipment, reducing equipment malfunctions, and ensuring continued compliance with State rules, federal regulations, and permit requirements.''

dioxide and nitrogen oxide, respectively. Additionally, the rule is revised to allow other test methods approved into the SIP at 15A NCAC 02D .2600 via cross-references. The new cross-reference to approved testing methods for sources of sulfur dioxide, which are regulated by Appendix P to Part 51, is to 15A NCAC 02D .2611. The new cross-reference to approved testing methods for sources of nitrogen oxide, which are regulated by Appendix A to Part 60, is to 15A NCAC 02D .2612. As these test methods have previously been approved in 15 NCAC 02D .2600 as valid procedures to determine emissions from stationary sources, EPA has determined the cross-references are appropriate.

EPA has preliminarily determined that the changes to the regulations above provide clarity and appropriate updates to monitoring, recordkeeping, and reporting requirements. These changes are minor and do not relax the regulations. The changes to the SIP do not interfere with any requirement concerning attainment or any other applicable requirement of the Act, and therefore, satisfy CAA section 110(l). For these reasons, EPA is proposing approval of the changes to these regulations.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following rules in 15A NCAC Subchapter 2D with a state-effective date of November 1, 2019: Rule .0601, *Purpose and Scope;* Rule .0602, *Definitions;* Rule .0604, *Exceptions to Monitoring and Reporting Requirements;* Rule .0605, *General Recordkeeping and Reporting Requirements;* and Rule .0606, *Sources Covered by Appendix P of 40 CFR part 51.* The proposed changes add one definition, add references to approved testing methods, update the reference format, and make minor changes to general formatting and language to provide clarity to the monitoring, recordkeeping, and reporting requirements. 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 North Carolina's October 9, 2020, SIP revisions, which contain changes to the following regulations under 15A NCAC Subchapter 02D: Rule .0601, *Purpose and Scope;* Rule .0602, *Definitions;* Rule .0604, *Exceptions to Monitoring and Reporting Requirements;* Rule .0605, *General Recordkeeping and Reporting Requirements;* and Rule .0606, *Sources Covered by Appendix P of 40 CFR part 51.* The proposed changes are consistent with the CAA.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 11, 2021.

John B. Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–10563 Filed 5–19–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2021–0265; FRL–10024–16–Region 1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; 111(d)/129 Revised State Plan for Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Clean Air Act State Plan revisions for Large Municipal Waste Combustors (MWC) submitted by the Massachusetts Department of Environmental Protection (MassDEP) on December 18, 2018. The revised State Plan is in response to amended emission guidelines (EGs) for Large MWCs promulgated on May 10, 2006. MassDEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large MWC. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before June 21, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2021–0265 at *https://www.regulations.gov,* or via email to *wong.shutsu@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Shutsu Wong, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail Code 05–2), Boston, MA 02109–3912, tel. 617–918–1078, email *wong.shutsu@epa.gov.*

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

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I. What is a State Plan?

Section 111(d) of the Clean Air Act (CAA) requires pollutants controlled under new source performance standards (NSPS) also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes emission guidelines (EGs) applicable to the control of the same pollutant for existing (designated) facilities. States with designated facilities must develop state plans to adopt the EGs into their body of regulations. States must also include in their state plans other elements, such as legal authority, inventories, and public participation documentation to demonstrate their ability to enforce the state plans.

II. Why does EPA need to approve State Plans?

Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State plans must be at least as protective as the EGs and will become federally enforceable upon EPA's approval. The procedures for adopting and submitting state plans are in 40 CFR part 60, subpart B.

III. Why does EPA regulate air emissions from MWCs?

EPA is required to regulate air emissions from MWCs under sections 111(d) and 129 of the Clean Air Act. When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious human health effects, primarily to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. What history does MassDEP have with MWC State Plans?

On January 11, 1999, MassDEP submitted a section 111(d)/129 State Plan for implementing and enforcing EGs for existing Large Municipal Waste Combustors (MWCs) pursuant to 40 CFR part 60, subpart Cb. On November 16, 2001, MassDEP submitted minor revisions for inclusion in its MWC State Plan. EPA approved that State Plan on October 9, 2002 (67 FR 62896).

V. Why did MassDEP revise the MWC State Plan?

Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of NSPS and EGs for solid waste incinerators and to amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for Large MWCs on May 10, 2006 (71 FR 27324). This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar

year basis and at least ninety percent (90%) data availability on a calendar quarter basis. The compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criteria for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;
- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations.

In response to the amended EGs, MassDEP revised the Code of Massachusetts Regulations (CMR), specifically at 310 CMR 7.08(2) entitled ''Municipal Waste Combustors,'' effective March 9, 2018, and submitted the revised State Plan to EPA on December 18, 2018.[1] The submittal only addresses those portions of the State Plan that have been updated since EPA's October 9, 2002 approval.[2]

[1] MassDEP's State Plan package included other amendments that were submitted for approval under the state's Clean Air Act section 110 State Implementation Plan. For instance, on October 15, 2020, EPA approved revisions to the Massachusetts State Implementation Plan which set reasonable achievable control technology standards for NOx emissions at municipal waste combustors. See 85 FR 65236. In this action, EPA is only taking action on the revisions relevant to the Clean Air Act sections 111(d)/129 State Plan revisions.

[2] The site assignment provisions of 310 CMR 7.08(2)(a), the definition of ''materials separation plan'' at 310 CMR 7.08(2)(c), and the materials separation plan provisions at 310 CMR 7.08(2)(f)8 were excluded in earlier State Plan approvals and continue to be excluded in this revision. MassDEP provided a letter clarifying this exclusion on March 19, 2021.

VI. What revisions have been made to the State Plan?

MassDEP revised the State Plan to incorporate changes to the state inventory of sources and to amend the state regulations that serve as the State Plan's enforceable mechanism. MassDEP revised the state MWC regulations at 310 CMR 7.08(2) and submitted the revised State Plan to EPA on December 18, 2018. Revisions to the MWC regulations address the list of sources, emissions standards, operating practices, compliance and performance testing, operator training and certification, and reporting and recordkeeping requirements.

A. Inventory of Sources

MassDEP removed the closed Fall River MWC from the list of existing Massachusetts MWC facilities subject to the MWC State Plan. The facility ceased operation in June 1999.

B. Emission Limits

The emission limits for particulate matter, cadmium, lead, and dioxin/furan with electrostatic precipitator at 310 CMR 7.08(2)(f)2. are revised to be consistent with EPA's May 2006 EGs for Large MWCs at 40 CFR 60.33b. The annual Massachusetts mercury emission limit is already more stringent than the federal EGs and therefore is not revised. The carbon monoxide emission limit for Mass Burn Refractory MWCs is removed from Table 1 at 310 CMR 7.08(2)(f)2. to reflect the municipal waste combustor technology that is employed at existing large MWCs in Massachusetts. The nitrogen oxides emission limits in 7.08(2)(f)3. are revised to be more stringent than the federal EGs as of March 10, 2020. The nitrogen oxide emission limits for facilities electing to implement a nitrogen oxides emissions averaging plan for multiple units located at the same municipal waste combustor plant, at 7.08(2)(f)4. are revised to be more stringent than the federal EGs.

C. Operating Practices

Operating practices under 310 CMR 7.08(2)(f)1.b. are revised to be consistent with 40 CFR 60.58b(m)(2)(i) to clarify requirements for combustor load and particulate matter control device operating parameters preceding and during quarterly or nine-month mercury compliance testing, and to clarify requirements for average carbon feed rate limits during mercury and dioxin/furan testing.[3]

[3] Section 60.38b(a) of subpart Cb incorporates the performance testing methods listed in 40 CFR part 60, subpart Eb, section 60.58b, as minimum state plan requirements for existing sources.

D. Compliance and Performance Testing

Provisions of 40 CFR 60.58b, ''Compliance and Performance Testing,'' are incorporated by reference into 310 CMR 7.08(2)(g). In addition, references are revised to reflect the latest EGs amendment date of May 10, 2006.

Procedures for measurement and calculation of the eight-hour block average carbon (or equivalent) usage rate in 310 CMR 7.08(2)(g)1.d. and (h)4.e. are revised, and 310 CMR 7.08(2)(g)3.d. is added for municipal waste combustor units where carbon injection (or its equivalent) is used to comply with the dioxin/furan and mercury emission limits, as required in 40 CFR 60.58b(m) and (d)(2)(xi). Provisions are incorporated from the EGs at 40 CFR 60.58b(g)(10) and (d)(4) for elective use of continuous automated sampling or emissions monitoring for dioxin/furan and mercury emissions, at 310 CMR 7.08(2)(g)1.e. and 2. Provisions from the EGs at 40 CFR 60.58b(c)(10), (d)(3) and (f)(8) are also incorporated for the elective use of continuous emissions monitoring of particulate matter, cadmium, lead and hydrogen chloride at 310 CMR 7.08(2)(g)7., 8., and 9. Provisions at 310 CMR 7.08(2)(g)5.a. are deleted as unnecessary due to the revised more stringent EPA emissions data capture requirements in the amended EGs. The limited waiver from the mercury emission limit at 310 CMR 7.08(2)(g)4 is deleted from the State Plan because the time by which an MWC could have applied for a limited waiver has passed, and the provision is no longer applicable. Requirements in 310 CMR 7.08(2)(j)1. and 6. for emission control plan submissions are updated with new submission deadlines and requirements, including new or amended applicable requirements of the revised State Plan. The schedule for compliance in 310 CMR 7.08(2)(k) is updated with new dates based on promulgation of the State Plan on March 9, 2018.

E. Training and Certification

Operator training and certification requirements in 310 CMR 7.08(2)(f)6.b., (h)11., (i)1., and (i)1.h. are revised to incorporate requirements in EPA's May 2006 EG revisions at 40 CFR 60.54b(c)(2).[4] Revisions address the specific requirements associated with occasions when control room operators provisionally certified under the

[4] Section 60.39b(c)(4) of subpart Cb incorporates the operator training and certification requirements of 40 CFR part 60, subpart Eb, section 60.54b as minimum state plan requirements for existing sources.

American Society of Mechanical Engineers WRO–1 Standard for the Qualification and Certification of Resource Recovery Facility Operators may perform duties ordinarily restricted to QRO certified operators and shift supervisors.

F. Reporting and Recordkeeping

Recordkeeping and reporting requirements at 310 CMR 7.08(2)(h) and (i) are amended to incorporate the requirements of EPA's May 2006 EGs at 40 CFR 60.59b(d), (g) and (h) by reference.[5] Revised requirements cover average emissions concentrations, highest levels records, exceedances, instances of insufficient data, excluded data, test results, accuracy determinations, sampling systems quality evaluations, details of when a certified operator is temporarily off site, and optional use of continuous monitoring and continuous automated sampling.

VII. Why is EPA proposing to approve MassDEP's revised State Plan?

EPA has evaluated the MWC State Plan submitted by MassDEP for consistency with the Act, the May 2006 EGs, and EPA guidelines and policy. EPA has determined that MassDEP's State Plan that was submitted on December 18, 2018 meets all requirements and, therefore, EPA is proposing to approve MassDEP's Plan to implement and enforce the EGs, as they apply to existing Large MWCs.

EPA's proposal to approve MassDEP's State Plan is based on our findings that:

(1) MassDEP provided adequate public notice of public hearings for the proposed rule-making, which allows Massachusetts to carry out and enforce provisions that are at least as protective as the EGs for Large MWCs, and

(2) MassDEP demonstrated its legal authority to: Adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

[5] Section 60.39b(a) of subpart Cb incorporates the reporting and recordkeeping provisions listed in 40 CFR part 60, subpart Eb, section 60.59b, as minimum state plan requirements for existing sources (except for the siting requirements under sections 60.59b(a), (b)(5), and (d)(11)).

VIII. Proposed Action

EPA is proposing to approve the MassDEP's revised State Plan for existing Large MWCs. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IX. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions of 310 CMR 7.08(2), entitled ''Municipal Waste Combustors,'' effective March 9, 2018, excluding the site assignment provisions of 310 CMR 7.08(2)(a), the definition of ''materials separation plan'' at 310 CMR 7.08(2)(c), and the materials separation plan provisions at 310 CMR 7.08(2)(f)8. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

X. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a State Plan submittal that complies with the provisions of the Act and applicable Federal regulations. Clean Air Act sections 111(d) and 129(b); 40 CFR part 60, subparts B and Cb; and 40 CFR part 62, subpart A; and 40 CFR 62.04. Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the State Plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: May 13, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2021–10518 Filed 5–19–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–195 and 11–10; Report No. 3172; FRS 27325]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by Thomas C. Power, on behalf of CTIA.

DATES: Oppositions to the Petitions must be filed on or before June 4, 2021. Replies to an opposition must be filed on or before June 14, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, Wireless Telecommunications Bureau, (202) 418–1395 or *Eli.Johnson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3172, which was released May 11, 2021. The full text of the Petitions can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because the Commission is not adopting any rules.

Subject: Establishing the Digital Opportunity Data Collection and Modernizing the FCC Form 477 Data Program, FCC 20–94, published at 85 FR 50886, August 18, 2020 and FCC 21–20, published at 86 FR 18124, April 7, 2021, in WC Docket Nos. 19–195 and 11–10. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–10591 Filed 5–19–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 17–59; Report No. 3173; FRS 27311]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission's rulemaking proceeding by Joshua M. Bercu, on behalf of USTelecom—The Broadband Association.

DATES: Oppositions to the Petition must be filed on or before June 4, 2021. Replies to an opposition must be filed on or before June 14, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerusha Burnett, Consumer and Governmental Affairs Bureau, (202) 418–0526 or *Jerusha.Burnett@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3173, released May 11, 2021. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Advanced Methods to Target and Eliminate Unlawful Robocalls, published 86 FR 17726, April 6, 2021, in CG Docket No 17–59. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–10600 Filed 5–19–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 216, 233, and 252

[Docket DARS–2021–0010]

RIN 0750–AJ73

Defense Federal Acquisition Regulation Supplement: Postaward Debriefings (DFARS Case 2018–D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 that provides enhanced postaward debriefing rights under negotiated contracts, task orders, and delivery orders.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 19, 2021, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D009, using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2018–D009''. Select ''Comment Now'' and follow the instructions provided to submit a Comment. Please include ''DFARS Case 2018–D009'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D009 in the subject line of the message.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Ziegler, OUSD(A&S)DPC/DARS, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 818 amends 10 U.S.C. 2305 to enhance postaward debriefing rights for competitive negotiated contracts, task orders, and delivery orders that exceed $10 million and to provide offerors the opportunity, upon receiving a postaward debriefing, to submit follow-up questions related to the debriefing and to receive agency responses. Section 818 also amends 31 U.S.C. 3553(d) to extend the timeframe during which the contracting officer shall immediately suspend contract performance or terminate the awarded contract if a protest is filed. Section 818(a)(4) requires robust procedures, consistent with 10 U.S.C. 2305(b)(5)(D), that must preclude point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under 5 U.S.C. 552(b). There is sufficient existing policy in FAR 3.104–4, Disclosure, protection, and marking of contractor bid or proposal information and source selection information; therefore, no additional DFARS changes are required in this regard.

II. Discussion and Analysis

The following changes to the DFARS are proposed to implement section 818 of the NDAA for FY 2018:

DFARS 215.506 implements new requirements for contracting officers when providing postaward debriefings, stipulating the requirements for information to be provided to successful and unsuccessful offerors. DFARS 215.506(S–70) outlines the debriefing process, which provides the opportunity for offerors to submit written follow-up questions within two business days after receiving the debriefing, as well as requirements for the agency to respond in writing to the timely submitted follow-up questions within five business days after receipt of the questions. DFARS 215.506(S–70)(2) ensures contracting officers do not consider the postaward debriefing to be concluded until the agency delivers its written response to an offeror.

DFARS 215.506(b) informs contracting officers that notwithstanding FAR 15.506(b), when requested, a written or oral debriefing is required for all contracts valued at $10 million or more.

DFARS 215.506(d)(i) and (ii) specify the following: (1) for contract awards in excess of $10 million, and not in excess of $100 million, with a small business or nontraditional defense contractor (as defined in DFARS 201.101), the debriefing information must include the option for a small business or nontraditional defense contractor to request the disclosure of the written source selection decision document, redacted to protect the confidential and proprietary information of other offerors; and (2) for the award of a contract in excess of $100 million, the debriefing information must include the disclosure of the written source selection decision document, redacted accordingly.

DFARS 216.505(b)(6) informs contracting officers that, in addition to the notice required at FAR 16.505(b)(6), a written or oral debriefing is required for task and delivery orders valued at $10 million or more. Paragraph (b)(6)(ii) directs contracting officers to follow the procedures in DFARS 215.506 when providing postaward debriefings to successful and unsuccessful awardees for task or delivery orders valued at $10 million or more.

Paragraph (c)(1) in DFARS 233.104, notifies contracting officers of the new timeframes for the suspension of performance or termination of a contract, task order, or delivery order awarded, upon notification from the General Accountability Office (GAO) of a protest filed within the following time periods, whichever is later:

- Within 10 days after the date of contract award or the issuance of a task or delivery order, where the value of the order exceeds $25 million.
- Within 5 days after the date that is offered to an unsuccessful offeror for a debriefing that is requested, and when requested is required, and the unsuccessful offeror submits no additional questions related to the debriefing.
- Within 5 days after the date that is offered to an unsuccessful offeror for a debriefing that is requested, and when requested is required, if the debriefing date offered is not accepted.
- Within 5 days, commencing on the day the Government delivers its written response to additional questions timely submitted by the unsuccessful offeror, when a requested and required debriefing is held on the date offered.

A new solicitation provision is added at DFARS 252.215–70XX, Notification to Offerors—Postaward Debriefings, for use in competitive negotiated solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items. The solicitation provision informs offerors of the new enhanced postaward debriefing requirements for contracts valued at $10 million or higher. The prescription for the provision is added at DFARS 215.570. The provision is also listed at DFARS 212.301(f)(vi) for use in the acquisition of commercial items.

The proposed rule adds a new contract clause at DFARS 252.216–70YY, Postaward Debriefings for Task Orders and Delivery Orders, for use in multiple-award contracts. The clause informs multiple-award contractors of the new enhanced postaward debriefing requirements for task orders and delivery orders. The clause is prescribed in paragraph (S–71) at DFARS 216.506 and is listed at DFARS 212.301, new paragraph (f)(vii), for use in the acquisition of commercial items.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule implements section 818 of the NDAA for FY 2018. Section 818 requires that DoD provide successful and unsuccessful offerors the opportunity for enhanced postaward debriefings. The rule adds one new solicitation provision at 252.215–70XX, Notification to Offerors—Postaward Debriefings, for use in competitive negotiated solicitations, and one new contract clause at 252.216–70YY, Postaward Debriefings for Task Orders and Delivery Orders, for use in multiple-award contracts.

DoD does not intend to apply this rule to contracts and subcontracts valued at or below the SAT. DoD intends to apply this rule to commercial items, including COTS items, for the reasons described in section III.C. of this preamble.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT)

41 U.S.C 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory (FAR) Council makes a determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Due to delegations of authority from USD(A&S), the Principal Director, DPC is the appropriate authority to make this determination.

C. Determination

DoD is proposing to not apply the requirements of section 818 to contracts at or below the SAT, since the requirements apply to contracts valued at $10 million or higher. The section 818 requirements will apply to negotiated procurements and contracts for the acquisition of commercial items, including COTS items.

DoD plans to make a determination to apply this statute to acquisitions for commercial items, including COTS items. It is not in the best interest of the Federal Government to exempt application of this rule to commercial items, including COTS items, for the following reasons. Implementation of section 818 affords offerors the opportunity for enhanced postaward debriefings for contracts and task or delivery orders that exceed $10 million. Implementation provides offerors the opportunity, upon receiving a postaward debriefing, to submit follow-up questions related to the debriefing and to receive agency responses. These enhanced postaward debriefing requirements will assist in developing small business capabilities, provide increased participation, and promote competition. Properly conducted postaward debriefings with this enhanced transparency may minimize the number of unnecessary protests filed while strengthening relationships between DoD and industry.

Applying these requirements to the acquisition of commercial items does not increase the burden on offerors, since the rule only enhances existing requirements concerning postaward debriefings. Exclusion of acquisitions of commercial items, including COTS items, would greatly limit access to the benefits afforded to successful and unsuccessful offerors by the section 818 requirements.

VI. Executive Orders 12866 and 13563

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

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule implements requirements primarily for the Government. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the DFARS to implement section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 818 provides offerors and contractors with significantly enhanced written or oral debriefing information for negotiated contracts and task or delivery orders that exceed $100 million, and the opportunity for small entities and nontraditional contractors to obtain such information for awards that exceed $10 million, but do not exceed $100 million, with small entities and nontraditional contractors.

The objective of this proposed rule is to ensure contractors and offerors are provided a standard written or oral postaward debriefing at the dollar thresholds in the statute, while protecting the confidential and proprietary information of other offerors. The statute also provides direction to contracting officers when notified that a protest has been received by the Government Accountability Office. The legal basis for the rule is section 818 of the NDAA for FY 2018 (Pub. L. 115–91).

The enhanced ability to obtain source selection information for actions over $10 million by submitting questions is voluntary. The rule is expected to have a beneficial impact on small entities by increasing the transparency of the award decision process. Obtaining such additional information may be helpful to entities competing on future actions.

Data obtained from the Federal Procurement Data System for FY 2018, 2019, and 2020 indicate that DoD awarded an average of approximately 5,534 negotiated awards and delivery or task orders per year valued between $10 and $100 million. Of those actions, an average of 3,994 were awarded to approximately 1,543 unique small entities and 1,311 nontraditional contractors. Based upon that data, approximately 1,543 unique small entities will have the opportunity to request and obtain enhanced debriefing information if desired.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the requirements of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D009), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain information collection requirements that require the approval of the Office of Management

and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 215, 216, 233, and 252

Government procurement.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 215, 216, 233, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 212, 215, 216, 233, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by—
■ a. Adding paragraph (f)(vi)(F);
■ b. Redesignating paragraph (f)(xviio) as (f)(xvii);
■ c. Redesignating paragraphs (f)(vii) through (xviii) as (f)(viii) through (xix); and
■ d. Adding new paragraph (f)(vii).

The additions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vi) * * *

(F) Use the provision at 252.215–70XX, Notification to Offerors—Postaward Debriefings, as prescribed in 215.570, to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91).

(vii) *Part 216—Types of Contracts.* Use the clause at 252.216–70YY, Postaward Debriefings for Task Orders and Delivery Orders, as prescribed in 216.506(S–71), to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91).

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Amend section 215.506 by—
■ a. Adding paragraphs (b) and (d); and
■ b. Adding paragraph (S–70) to follow paragraph (e).

The additions read as follows:

215.506 Postaward debriefing of offerors.

(b) Notwithstanding FAR 15.506(b), when requested, a written or oral debriefing is required when awarding a contract valued at $10 million or more (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91)).

(d) In addition to the requirements of FAR 15.506(d), the minimum debriefing information shall include the following:

(i) For award of a contract in excess of $10 million and not in excess of $100 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(ii) For award of a contract in excess of $100 million, disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

* * * * *

(S–70) When providing a required postaward debriefing to successful and unsuccessful offerors, contracting officers shall—

(1) Provide an opportunity to submit additional written questions related to the required debriefing within 2 business days after receiving the debriefing; the agency shall respond in writing to timely submitted additional questions within 5 business days after receipt of the questions; and

(2) Not consider the postaward debriefing to be concluded until—

(i) After the second business day after delivering the debriefing, if no additional questions are received; or

(ii) The agency delivers its written responses to timely submitted additional questions.

■ 4. Add section 215.570 to subpart 215.5 to read as follows:

215.570 Solicitation provision.

Use the provision at 252.215–70XX, Notification to Offerors—Postaward Debriefings, in competitive negotiated solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

PART 216—TYPES OF CONTRACTS

■ 5. Amend section 216.505 by adding paragraphs (b)(6) introductory text and (b)(6)(ii) to read as follows:

216.505 Ordering.

(b) * * *

(6) *Postaward notices and debriefing of awardees for orders exceeding $6 million.* In addition to the notice required at FAR 16.505(b)(6), a written or oral postaward debriefing of successful and unsuccessful awardees is required for task orders and delivery orders valued at $10 million or higher (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91)).

(ii) Follow the procedures at 215.506 when providing the postaward debriefing to successful and unsuccessful awardees for task orders or delivery orders valued at $10 million or higher.

■ 6. Amend section 216.506 by adding paragraph (S–71) to read as follows:

216.506 Solicitation provisions and contract clauses.

* * * * *

(S–71) Use the clause at 252.216–70YY, Postaward Debriefings for Task Orders and Delivery Orders, in competitive negotiated solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when a multiple-award contract is contemplated.

PART 233—PROTESTS, DISPUTES, AND APPEALS

233.102 [Amended]

■ 7. Amend section 233.102 by removing ''Government Accountability Office'' and adding ''Government Accountability Office (GAO)'' in its place.

■ 8. Add section 233.104 to subpart 233.1 to read as follows:

233.104 Protests to GAO.

(c)(1) In lieu of the time periods in FAR 33.104(c)(1), contracting officers shall immediately suspend performance or terminate the awarded contract, task order, or delivery order upon notice from the GAO of a protest filed within the time periods listed below, whichever is later, except as provided in FAR 33.104(c)(2) and (3)—

(A) Within 10 days after the date of awarding a contract or issuing a task order or delivery order, where the value of the order exceeds $25 million (10 U.S.C. 2304c(e));

(B) Within 5 days after the date that was offered to an unsuccessful offeror for a debriefing that is requested, and when requested is required, and the unsuccessful offeror submits no additional questions related to the debriefing;

(C) Within 5 days after the date that was offered to an unsuccessful offeror for a debriefing that is requested, and when requested is required, if the debriefing date offered is not accepted; or

(D) Within 5 days commencing on the day the Government delivers its written response to additional questions timely submitted by the unsuccessful offeror,

when a requested and required debriefing is held on the date offered (31 U.S.C. 3553).

233.171 [Amended]

■ 9. Amend section 233.171 by removing ''Government Accountability Office'' and adding ''GAO'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add section 252.215–70XX to read as follows:

252.215–70XX Notification to Offerors—Postaward Debriefings.

As prescribed in 215.570, use the following provision:

Notification to Offerors—Postaward Debriefings (DATE)

(a) *Definition.* As used in this provision—

Nontraditional defense contractor means an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement (10 U.S.C. 2302(9)).

(b) *Postaward debriefing.* (1) Upon timely request, the Government will provide a written or oral postaward debriefing for contracts valued at $10 million or higher to the Offeror, while protecting the confidential and proprietary information of other offerors. The request is considered timely if requested within 3 days of notification of contract award.

(2) When required, the minimum postaward debriefing information will include the following:

(i) For contracts in excess of $10 million and not in excess of $100 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(ii) For contracts in excess of $100 million, disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(3) If a postaward debriefing is provided—

(i) The debriefed Offeror may submit additional written questions related to the required and provided debriefing within 2 business days after receiving the debriefing; the agency will respond in writing to timely submitted additional questions within 5 business days after receipt; and

(ii) The postaward debriefing will not be considered to be concluded until—

(A) After the second business day after the agency delivered the debriefing, if no additional written questions were submitted by the debriefed Offeror, or

(B) The agency delivers its written responses to timely submitted additional questions.

(c) *Contract performance.* The Government may suspend performance of or terminate the awarded contract upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (c)(1) through (4) of this provision, whichever is later:

(1) Within 10 days after the date of contract award.

(2) Within 5 days after the offered date for a debriefing to an unsuccessful offeror that is timely requested, and when requested is required, if the unsuccessful offeror submits no additional questions related to the debriefing.

(3) Within 5 days after the offered date for a debriefing to an unsuccessful offeror that is timely requested, and when requested is required, if the debriefing date offered is not accepted.

(4) Within 5 days after the Government delivers its written response to additional questions timely submitted by the unsuccessful offeror, when a requested and required debriefing is held on the date offered.

(End of provision)

■ 11. Add section 252.216–70YY to read as follows:

252.216–70YY Postaward Debriefings for Task Orders and Delivery Orders.

As prescribed at 216.506(S–71), use the following clause:

Postaward Debriefings for Task Orders and Delivery Orders (DATE)

(a) *Postaward debriefing.* (1) Upon timely request, the Government will provide a written or oral postaward debriefing for task orders or delivery orders valued at $10 million or higher to the Contractor, regardless of whether the Contractor's offer for the order was successful or unsuccessful, while protecting the confidential and proprietary information of other contractors. The request is considered timely if requested within 3 days of notification of task order or delivery order award.

(2) If a postaward debriefing is provided—

(i) The debriefed Contractor may submit additional written questions related to the required and provided debriefing within 2 business days after receiving the debriefing; the agency will respond in writing to timely submitted additional questions within 5 business days after receipt; and

(ii) The postaward debriefing will not be considered to be concluded until—

(A) After the second business day after the agency delivered the debriefing, if no additional written questions were submitted by the debriefed Contractor; or

(B) The agency delivers its written responses to timely submitted additional questions.

(b) *Task order or delivery order performance.* The Government may suspend performance of or terminate the awarded task order or delivery order, upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (b)(1) through (4) of this clause, whichever is later:

(1) Within 10 days after the date of issuance of a task order or delivery order, where the value of the order exceeds $25 million (10 U.S.C. 2304c(e)).

(2) Within 5 days after the offered date for a debriefing to an unsuccessful contractor that is timely requested, and when requested is required, if the unsuccessful contractor submits no additional questions related to the debriefing.

(3) Within 5 days after the offered date for a debriefing to an unsuccessful contractor that is timely requested, and when requested is required, if the debriefing date offered is not accepted.

(4) Within 5 days after the Government delivers its written response to additional questions timely submitted by the unsuccessful contractor, when a requested and required debriefing is held on the date offered (31 U.S.C. 3553).

(End of clause)

[FR Doc. 2021–10581 Filed 5–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 236, 242, and 252

[Docket DARS–2020–0040]

RIN 0750–AK16

Defense Federal Acquisition Regulation Supplement: Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that establishes a requirement for use of the best available information regarding past performance of subcontractors and joint venture partners when awarding DoD contracts for construction and architect-engineer services.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 19, 2021, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D055, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for

''DFARS Case 2018–D055.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please ''DFARS Case 2018–D055'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D055 in the subject line of the message.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Barbara Trujillo, OUSD(A&S)DPC/DARS, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Trujillo, telephone 571–372–6102.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 823 requires performance evaluations in accordance with specified conditions for individual partners of joint ventures for construction and architect-engineer (A&E) services contracts with an estimated value in accordance with the threshold set forth in FAR 42.1502(e), currently $750,000; and for first-tier subcontractors performing a portion of a construction or A&E services contract exceeding the threshold set forth in FAR 42.1502(e) or 20 percent of the value of the prime contract, whichever is higher. An exception may be granted when submission of annual past performance evaluations would not provide the best representation of the contractor's performance, including subcontractors and joint venture partners.

II. Discussion and Analysis

The following changes to the DFARS are proposed to implement section 823 of the NDAA for FY 2019:

DFARS 242.1501–70 defines ''first-tier subcontractor'' and ''subcontractor'' as those terms are applicable to subpart 242.15. Requirements for past performance evaluations to be performed for first-tier subcontractors and partners of a joint venture are provided at DFARS 242.1502 paragraph (e) for construction contracts, and paragraph (f) for A&E services contracts. Specifically, past performance evaluations are required for first-tier subcontractors performing a portion of construction or A&E services contracts or orders that are valued at or above the threshold in FAR 42.1502(e) or 20 percent of the value of the prime contract, whichever is higher. Past performance evaluations are required for individual partners of a joint venture awarded a construction or A&E services contract or order valued at or above the threshold in FAR 42.1502(e).

When acquiring construction or architect-engineer services, contracting officers will consider, as part of the past performance evaluation, an offeror's past performance as a first-tier subcontractor or individual partner of a joint venture under construction and/or architect-engineer services contracts. In reviewing first-tier subcontractor and joint venture partner past performance evaluations, contracting officers, in coordination with the cognizant requiring office, will work to ensure the following: Consistency between prime and first-tier subcontractor rating information; successful completion of applicable contracts; the same opportunity for each joint venture partner to submit comments, rebutting statements, or additional information consistent with FAR subpart 42.15; and clear identification, in the rating, of the responsibilities of each partner for discrete elements of the work where the partners are not jointly and severally responsible for the project.

DFARS 242.1502, paragraphs (e)(iv) and (f)(iv) provide guidance to contracting officers for providing an exception when the submission of annual past performance ratings would not provide the best representation of the performance of a prime contractor, subcontractor, or joint venture partners.

DFARS 242.1504–70(a) adds a prescription for a new DFARS solicitation provision 252.242–70XX, Identification of Joint Venture Partners for Past Performance—Construction and Architect-Engineer Services, to convey the requirement to identify, as part of an offer, all partners in the joint venture. This provision is required for construction and A&E services solicitations that include the clause at DFARS 252.242–70YY. The provision requires all joint venture partners to be registered in the System for Award Management (SAM) in accordance with FAR 4.11 and FAR provision 52.204–7, System for Award Management, prior to submission of an offer.

DFARS 242.1504–70(b)(1) and (b)(2), respectively, add new prescriptions for the use of two new DFARS contract clauses: 252.242–70YY, Past Performance of Joint Venture Partners—Construction and Architect-Engineer Services; and 252.242–70ZZ, Past Performance of Subcontractors—Construction and Architect-Engineer Services. The clause at 252.242–70YY informs the contractor that past performance evaluations are required for joint ventures awarded a construction or A&E services contract exceeding the threshold set forth in FAR 42.1502(e) (currently $750,000). DFARS clause 252.242–70ZZ instructs contractors to prepare past performance evaluations for first-tier subcontractors performing a portion of a construction or an A&E services contract with an estimated value in accordance with the thresholds set forth in FAR 42.1502(e), and 242.1502(e)(i) or 242.1502(f)(i), or 20 percent of the value of the prime contract, whichever is higher. In addition, the clause requires contractors to provide the legal business name, the unique entity identifier, and Commercial and Government Entity (CAGE) code of each first-tier subcontractor under the contract as a part of its offer or as new subcontracts are issued during performance.

New text is added to DFARS 215.305(a)(2)(C) advising contracting officers to consider past performance information on first-tier subcontractors and joint venture partners in source selections for construction and A&E services contracts.

The rule provides cross-references to the policy and requirements of DFARS 242.1502(e) at other applicable subparts for the DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

To implement section 823 of the NDAA for FY 2019, this proposed rule adds one new solicitation provision and two new contract clauses.

The new solicitation provision is 252.242–70XX, Identification of Joint Venture Partners for Past Performance—Construction and Architect-Engineer Services. This provision is used to convey the identification requirements to joint venture partners.

The two new clauses are 252.242–70YY, Past Performance of Joint Venture Partners—Construction and Architect-Engineer Services; and 252.242–70ZZ, Past Performance of Subcontractors—Construction and Architect-Engineer Services. The clauses inform the contractor that past performance evaluations are required for partners in a joint venture awarded a construction

or A&E services contract exceeding the threshold set forth in FAR 42.1502(e) (currently $750,000), and for first-tier subcontractors performing a portion of a construction or an A&E services contract with an estimated value in accordance with the threshold set forth in FAR 42.1502(e) or 20 percent of the value of the prime contract, whichever is higher.

DoD is not proposing to apply the requirements of section 823 to contracts at or below the simplified acquisition threshold. Section 823 requirements will not apply to the acquisition of commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

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

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. Section 823 requires performance evaluations in accordance with specified conditions for individual partners of joint ventures awarded construction or architect-engineer (A&E) services contracts exceeding the threshold set forth in FAR 42.1502(e) (currently $750,000), and for first-tier subcontractors performing a portion of a construction or A&E services contract with an estimated value in accordance with the threshold set forth in FAR 42.1502(e) or 20 percent of the value of the prime contract, whichever is higher. An exception may be granted when submission of annual past performance evaluations would not provide the best representation of the contractor's performance, including subcontractors and joint venture partners.

The objective of this proposed rule is to implement the statutory changes to require performance evaluations for first-tier subcontractors and individual partners of joint ventures for construction and A&E services contracts. An exception may apply when submission of annual evaluations would not provide the best representation of the contractor's performance, including subcontractors and joint venture partners.

This rule is expected to impact small entities performing as prime contractors, first-tier subcontractors, or partners in joint ventures awarded construction or A&E services contracts or orders exceeding $750,000. According to data obtained from the Federal Procurement Data System for fiscal years 2016 through 2018, an average of 490 small entities received DoD contracts, task orders, or delivery orders for construction and A&E services exceeding $750,000. Those small entities would need to provide performance evaluations of their first-tier subcontractors.

Approximately 822 contracts, task orders, and delivery orders over $750,000 were awarded each year for construction and A&E services. Each of those awards is estimated to have two to four subcontracts, for a total of 2,121 subcontracts that would require performance evaluations. DoD estimates that approximately 1,208 of those subcontracts were awarded to small entities. These small entities would receive a performance evaluation as a first-tier subcontractor.

DoD estimates that approximately 112 joint ventures per year were awarded contracts, task orders, or delivery orders for construction and A&E services. DoD further estimates that approximately half (56) of those joint ventures include at least one small entity as a partner in the joint venture. Those small entities would receive a performance evaluation as a partner in the joint venture.

This proposed rule does include new reporting, and other compliance requirements for small businesses. Small business prime contractors will be required to prepare past performance evaluations for their first-tier subcontractors described in DFARS 242.1502(e)(i) and (f)(i). Small businesses that are first-tier subcontractors and small business partners in joint ventures described in DFARS 242.1502(e)(i) and (f)(i) will be given the opportunity to submit comments, rebutting statements, or additional information in response to past performance evaluations. There are no associated recordkeeping requirements. Accordingly, DoD estimates that it takes approximately one hour at an hourly rate of $56.76 for a contractor representative to draft, review, comment, accomplish senior level concurrence, and return past performance evaluations for: (1) First-tier subcontractors, and (2) joint ventures.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the proposed rule that would meet the statutory requirements.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2018–D055), in correspondence.

VII. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This rule contains information collection requirements in addition to those at FAR 42.15, under OMB Control Number 9000–0142 for prime contractor past performance evaluations. This rule adds a new DoD information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning a DFARS solicitation provision at 252.242–70XX, Identification of Joint Venture Partners for Past Performance–Construction and

Architect-Engineer Services; and contract clauses at 252.242–70YY, Past Performance of Joint Venture Partners—Construction and Architect-Engineer Services; and 252.242–70ZZ, Past Performance of Subcontractors—Construction and Architect-Engineer Services.

A. Public reporting burden for this collection of information is estimated to average 1.1 hours per response, including the time for reviewing instructions, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows:

(1) 252.242–70XX, Identification of Joint Venture Partners for Past Performance—Construction and Architect-Engineer Services

Respondents: 112.
Responses per respondent: 1.
Total annual responses: 112.
Hours per response: 0.5.
Total response burden hours: 56.

(2) 252.242–70YY, Past Performance of Joint Venture Partners—Construction and Architect-Engineer Services

Respondents: 336.
Responses per respondent: 1.
Total annual responses: 336.
Hours per response: 1.
Total response burden hours: 336.

(3) Past Performance Evaluations of First-Tier Subcontractors Under 252.242–70ZZ, Past Performance of Subcontractors—Construction and Architect-Engineer Services

Respondents: 2,943.
Responses per respondent: 1.
Total annual responses: 2,943.
Hours per response: 1.
Total response burden hours: 2,943.

(4) Information on Newly Awarded First-Tier Subcontracts Under 252.242–70ZZ, Past Performance of Subcontractors—Construction and Architect-Engineer Services

Respondents: 82.
Responses per respondent: 1.
Total annual responses: 82.
Hours per response: 0.5.
Total response Burden Hours: 41.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Susan Minson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Susan_M_Minson@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Ms. Barbara Trujillo, OUSD (A&S)DPC/DARS, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To obtain a copy of the supporting statement and associated collection instruments, please email *osd.dfars@mail.mil.* Include DFARS Case 2018–D055 in the subject line of the message.

List of Subjects in 48 CFR Parts 215, 236, 242, and 252

Government procurement.

Jennifer D. Johnson,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215, 236, 242, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 236, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Amend section 215.305 by adding paragraph (a)(2)(C) to read as follows:

215.305 Proposal evaluation.

(a)(2) * * *

(C) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), when acquiring construction or architect-engineer services, contracting officers shall consider an offeror's past performance as a first-tier subcontractor or individual partner of a joint venture under construction and/or architect-engineer services contracts as part of the evaluation of past performance.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 3. Add section 236.201 to subpart 236.2 to read as follows:

236.201 Evaluation of contractor performance.

See 242.1502(e) for additional requirements on past performance evaluations for first-tier subcontractors and joint venture partners for construction contracts (section 823 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232)).

■ 4. Amend section 236.570 by adding paragraph (f) to read as follows:

236.570 Additional provisions and clauses.

* * * * *

(f) See 242.1504–70 for the additional provision and clauses required for construction contracts with an estimated value at or above the thresholds set forth in FAR 42.1502(e) and 242.1502(e)(i).

■ 5. Revise section 236.604 to read as follows:

236.604 Performance evaluation.

(1) Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the architect-engineer contractor's performance.

(2) See 242.1502(f) for additional requirements on past performance evaluations for first-tier subcontractors and joint venture partners for architect-engineer services contracts (section 823 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232)).

■ 6. Revise section 236.609–70 to read as follows:

236.609–70 Additional provisions and clauses.

(a) Use the provision at 252.236–7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for architect-engineer contracts that are—

(1) Funded with military construction appropriations;

(2) Estimated to exceed $500,000; and

(3) To be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

(b) See 242.1504–70 for the additional provision and clauses required for architect-engineer services contracts with an estimated value at or above the thresholds set forth in FAR 42.1502(e) and 242.1502(f)(i).

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 7. Add sections 242.1501 and 242.1501–70 to subpart 242.15 to read as follows:

242.1501 General.

242.1501–70 Definitions.

As used in this subpart—

First-tier subcontractor means a subcontractor awarded a contract directly by the prime contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts, the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

Subcontractor, as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

■ 8. Amend section 242.1502 by adding paragraphs (e) and (f) to read as follows:

242.1502 Policy.

(e)(i) *General.* In addition to the requirements in FAR 42.1502(e), past performance evaluations are required for a construction contract or order, for—

(A) First-tier subcontractors performing a portion of a construction contract or order valued at or above the threshold in FAR 42.1502(e) or 20 percent of the value of the prime contract, whichever is higher, if the overall execution of the work is impacted by the performance of the subcontractor or subcontractors; and

(B) Individual partners of a joint venture awarded a construction contract or order valued at or above the threshold in FAR 42.1502(e) (section 823 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232)).

(ii) *First-tier subcontractor past performance evaluations.* Contracting officers, in coordination with the cognizant requiring office, shall—

(A) Ensure the information included in the prime contractor's ratings of its first-tier subcontractors is not inconsistent with the information included in the rating for the prime contractor, and the first-tier subcontractor evaluations are conducted consistent with the requirements of FAR subpart 42.15;

(B) Ensure negative evaluations of a subcontractor in no way obviate the prime contractor's responsibility for successful completion of the contract and management of its subcontractors; and

(C) Use their best judgment on whether the overall execution of the work is impacted by the performance of the subcontractor or subcontractors.

(iii) *Joint venture contractor past performance evaluations.* Contracting officers, in coordination with the cognizant requiring office, shall—

(A) Ensure the rating for joint ventures, at a minimum, includes an identification that allows the evaluation to be retrieved for each partner of the joint venture;

(B) Provide each joint venture partner the same opportunity to submit comments, rebutting statements, or additional information, consistent with FAR subpart 42.15; and

(C) Ensure the rating clearly identifies the responsibilities of joint venture partners for discrete elements of the work where the partners are not jointly and severally responsible for the project.

(iv) *Exception.* The contracting officer may grant an exception from the annual evaluation requirements under FAR 42.1502(a) for submission of annual evaluations for construction contracts when the past performance ratings would not provide the best representation of the performance of a contractor, subcontractor, or joint venture partners, including—

(A) Where no severable element of the work has been completed; or

(B) When the contracting officer determines that—

(*1*) An insubstantial portion of the contract work has been completed in the preceding year and the lack of performance is at no fault to the contractor; or

(*2*) There is an issue in dispute which, until resolved, would likely cause the annual rating to inaccurately reflect the past performance of the contractor.

(C) The contracting officer's decision shall be approved at least one level above the contracting officer.

(f)(i) *General.* In addition to the requirements in FAR 42.1502(f), past performance evaluations are required, for an architect-engineer services contract or order, for—

(A) First-tier subcontractors performing a portion of an architect-engineer services contract or order valued at or above the threshold in FAR 42.1502(e) or 20 percent of the value of the prime contract, whichever is higher, if the overall execution of the work is impacted by the performance of the subcontractor or subcontractors; and

(B) Individual partners of a joint venture awarded an architect-engineer services contract or order valued at or above the threshold in FAR 42.1502(e) (section 823 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232)).

(ii) *First-tier subcontractor past performance evaluations.* Contracting officers, in coordination with the cognizant requiring office, shall—

(A) Ensure the information included in the prime contractor's ratings of its first-tier subcontractors is not inconsistent with the information included in the rating for the prime contractor, and the first-tier subcontractor evaluations are conducted consistent with the requirements of FAR subpart 42.15;

(B) Ensure negative evaluations of a subcontractor in no way obviate the prime contractor's responsibility for successful completion of the contract and management of its subcontractors; and

(C) Use their best judgment on whether the overall execution of the work is impacted by the performance of the subcontractor or subcontractors.

(iii) *Joint venture contractor past performance evaluations.* Contracting officers, in coordination with the cognizant requiring office, shall—

(A) Ensure the rating for joint ventures, at a minimum, includes an identification that allows the evaluation to be retrieved for each partner of the joint venture;

(B) Provide each joint venture partner the same opportunity to submit comments, rebutting statements, or additional information, consistent with FAR subpart 42.15; and

(C) Ensure the rating clearly identifies the responsibilities of joint venture partners for discrete elements of the work where the partners are not jointly and severally responsible for the project.

(iv) *Exception.* The contracting officer may grant an exception from the annual evaluation requirements under FAR 42.1502(a) for submission of annual evaluations for architect-engineer services contracts when the past performance ratings would not provide the best representation of the performance of a prime contractor, subcontractor, or joint venture partners, including—

(A) Where no severable element of the work has been completed; or

(B) When the contracting officer determines that—

(*1*) An insubstantial portion of the contract work has been completed in the preceding year and the lack of performance is at no fault to the contractor; or

(*2*) There is an issue in dispute which, until resolved, would likely cause the annual rating to inaccurately reflect the past performance of the contractor.

(C) The contracting officer's decision shall be approved at least one level above the contracting officer.

* * * * *

■ 9. Add section 242.1504–70 to subpart 242.15 to read as follows:

242.1504–70 Solicitation provision and contract clauses.

(a) Use the provision at 252.242–70XX, Identification of Joint Venture Partners for Past Performance—Construction and Architect-Engineer Services, in solicitations that contain the clause at 252.242–70YY.

(b) Use the following clauses in solicitations, contracts, and orders for construction and architect-engineer services if the estimated value is at or above the thresholds in FAR 42.1502(e), and 242.1502(e)(i) for construction or 242.1502(f)(i) for architect-engineer services, respectively:

(1) 252.242–70YY, Past Performance of Joint Venture Partners—Construction and Architect-Engineer Services.

(2) 252.242–70ZZ, Past Performance of Subcontractors—Construction and Architect-Engineer Services.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add section 252.242–70XX to read as follows:

252.242–70XX Identification of Joint Venture Partners for Past Performance—Construction and Architect-Engineer Services.

As prescribed in 242.1504–70(a), use the following provision:

Identification of Joint Venture Partners for Past Performance—Construction and Architect-Engineer Services (DATE)

(a) All joint venture partners shall be registered in the System for Award Management (see Federal Acquisition Regulation 52.204–7, System for Award Management) prior to submission of an offer.

(b) The lead joint venture partner shall be identified as a part of an offer.

(c) All joint venture partners shall provide their individual legal names, unique entity identifiers, and their Commercial and Government Entity (CAGE) codes as a part of an offer.

(End of provision)

■ 11. Add section 252.242–70YY to read as follows:

252.242–70YY Past Performance of Joint Venture Partners—Construction and Architect-Engineer Services.

As prescribed in 242.1504–70(b) and (b)(1), use the following clause:

Past Performance of Joint Venture Partners—Construction and Architect-Engineer Services (DATE)

(a) Past performance evaluations conducted on the contract in accordance with Federal Acquisition Regulation (FAR) subpart 42.15 and Defense Federal Acquisition Regulation Supplement 242.1502 will apply to the joint venture Contractor itself, as well as each individual partner of the joint venture identified in the Contractor's offer, to ensure that past performance information in the Contractor Performance Assessment Reporting System on joint venture projects is considered in future awards to individual joint venture partners.

(b) Each partner, through the joint venture, is given the same opportunity to submit comments, rebutting statements, or additional information, consistent with FAR subpart 42.15.

(End of clause)

■ 12. Add section 252.242–70ZZ to read as follows:

252.242–70ZZ Past Performance of Subcontractors—Construction and Architect-Engineer Services.

As prescribed in 242.1504–70(b) and (b)(2), use the following clause:

Past Performance of Subcontractors—Construction and Architect-Engineer Services (DATE)

(a) *Definitions.* As used in this clause—

First-tier subcontractor means a subcontractor awarded a contract directly by the prime contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor (see Federal Acquisition Regulation (FAR) 44.101).

(b) *Past performance evaluations.* The Contractor shall prepare past performance evaluations for first-tier subcontractors performing a portion of a construction or an architect-engineer services contract with an estimated value at or above the threshold set forth in FAR 42.1502(e), or 20 percent of the value of the prime contract, whichever is higher. First-tier subcontractors shall have an opportunity to respond to the past performance evaluation to submit comments, rebutting statements, or additional information, consistent with FAR 42.1503.

(c) *Contractor's responsibility.* Negative evaluations of a subcontractor in no way obviate the Contractor's responsibility for successful completion of the contract and management of its subcontractors.

(d) *Identification of first-tier subcontractors.* The Contractor shall provide the Contracting Officer with the legal business name, the unique entity identifier, and Commercial and Government Entity (CAGE) code of each first-tier subcontractor under the contract that meets the criteria in paragraph (b) of this clause within 60 days after award and within 30 days as new subcontracts that meet the criteria at Defense Federal Acquisition Regulation Supplement 242.1502(e) and (f) are issued during performance.

(End of clause)

[FR Doc. 2021–10582 Filed 5–19–21; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 86, No. 96
Thursday, May 20, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 17, 2021.

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 June 21, 2021 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.

Rural Housing Service

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Control Number: 0575–0018.

Summary of Collection: Rural Development (RD) is required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR 1901–E, require the recipients of Rural Development's Federal financial assistance to collect various types of information by race, color, and national origin.

Need and Use of the Information: RD will use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. This information is made available to USDA officials, officials of other Federal agencies and to Congress for reporting purposes. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.

Description of Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 27,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 436,779.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–10632 Filed 5–19–21; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0024]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Endangered Species Regulations and Forfeiture Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the protection of endangered species of terrestrial plants and for procedures related to the forfeiture of plants or other property.

DATES: We will consider all comments that we receive on or before July 19, 2021.

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0024 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

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

FOR FURTHER INFORMATION CONTACT: For information on the regulations to protect endangered species of terrestrial plants and forfeiture procedures, contact Dr.

John Veremis, National CITES Director, PHP, PPQ, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1236; (301) 851–2347. For information on the information collection, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Control Number: 0579–0076.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the U.S. Department of Agriculture (USDA) is responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that pertain to the importation, exportation, or reexportation of plants.

As part of this mission, USDA's Animal and Plant Health Inspection Service (APHIS) administers the regulations in 7 CFR part 355, ''Endangered Species Regulations Concerning Terrestrial Plants.'' In accordance with these regulations, any entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the CITES regulations at 50 CFR 17.12 or 23.23 must obtain a protected plant permit from APHIS. Such entities include importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. The requirement does not apply to persons engaged in business merely as carriers or customhouse brokers.

To obtain a protected plant permit, entities must complete an application and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States, exported, or reexported, provided they are accompanied by documentation required by the regulations and all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species of terrestrial plants requires the use of this application process, as well as the use of other information collection activities including, but not limited to, appealing the denial of a permit; marking containers used for the importation, exportation, or reexportation of the plants; notifying APHIS of the impending importation, exportation, or reexportation of the plants; validating documents; creating and maintaining records of importation, exportation, and reexportation; and submitting related reports from records required to be maintained.

APHIS also administers regulations at 7 CFR part 356, ''Forfeiture Procedures,'' which sets out procedures for the forfeiture of plants or other property by entities found to be in violation of the Endangered Species Act or the Lacey Act (16 U.S.C. 3371 *et seq.*). Entities whose property is subject to forfeiture may file with APHIS a waiver of forfeiture procedures, a claim, a request for return of property, or petition for remission or mitigation of forfeiture.

The information provided by these information collection activities is critical to APHIS' ability to carry out its responsibilities under the Endangered Species Act and the Lacey Act. These responsibilities include monitoring importation, exportation, and reexportation activities involving endangered species of plants, as well as the investigation of possible violations and the forfeiture of plants or other property.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.084 hours per response.

Respondents: U.S. importers and exporters of endangered species of terrestrial plants.

Estimated annual number of respondents: 1,097.

Estimated annual number of responses per respondent: 147.

Estimated annual number of responses: 161,434.

Estimated total annual burden on respondents: 13,499 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of May 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–10634 Filed 5–19–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket # RBS–21–BUSINESS–0014]

Notice of Reserved Funding for the Rural Business Development Grant (RBDG) Program for Fiscal Year (FY) 2021

AGENCY: Rural Business-Cooperative Service, USDA (Rural Development).

ACTION: Notice of funding availability.

SUMMARY: The Rural-Business Cooperative Service (the Agency) announces the availability of funds in the total amount of $2 million reserved for projects located in rural coastal communities, with priority given to National Scenic Areas that were devastated by wildfires that are in need of economic development assistance, to support innovation and job growth. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Applications must be submitted to the USDA Rural Development State Office in the state where the project is located. For projects involving multiple states, the application must be filed in the Rural Development State Office where the Applicant is located. Applications may be submitted in paper or electronic format to the appropriate Rural Development State Office and must be received by 4:30 p.m. local time July 6, 2021. Applicants are encouraged to contact their respective Rural Development State Office for an email contact to submit an electronic application prior to the submission

deadline date. A list of the USDA Rural Development State Offices can be found at: *https://www.rd.usda.gov/page/state-offices.*

ADDRESSES: Applications must be submitted to the USDA Rural Development State Office for the State where the Project is located. For Projects involving multiple states, the application must be filed in the Rural Development State Office where the Applicant is located. Applications may be submitted in paper or electronic format to the appropriate Rural Development State Office and must be received by 4:30 p.m. local time on the deadline date. Applicants are encouraged to contact their respective Rural Development State Office for an email contact to submit an electronic application prior to the submission deadline date. A list of the USDA Rural Development State Office contacts can be found at: *https://www.rd.usda.gov/page/state-offices.*

FOR FURTHER INFORMATION CONTACT: David Chestnut, Branch Chief, Program Management Division, at (202) 692–5233, or *david.chestnut@usda.gov,* Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, MS 3226, Room 5160-South, Washington, DC 20250–3226, or call (202) 720–1400.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act, 2021, Div. A, Title III—Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2021 designated funding not to exceed $2 million for Rural Business Development Grants in rural coastal communities, with priority given to National Scenic Areas that were devastated by wildfires that are in need of economic development assistance, to support innovation and job growth. This designated funding is in addition to Fiscal Year 2021 funds allocated for Rural Business Development Grant Projects (86 FR 8160) and will be competed separately. With this Notice, Rural Development is announcing the availability of additional RBDG funds for projects located in rural coastal communities.

All applicants and projects for this funding must meet the applicant and use of proceeds requirements of the Rural Business Development Grant program as stated in 7 CFR part 4280, subpart E and requirements of this notice. Rural coastal community for the purposes of this notice is defined as an area or community bordering a river or ocean coastline, where the land and water surfaces meet. The applicant must provide a map indicating the location of the proposed project and describe how their project will support innovation and job creation in the coastal community. Priority is given to National Scenic Areas that have been devastated by wildfires. A National Scenic Area is a federally designated area of outstanding natural and scenic value that receives a level of environmental protection. All eligible applications will compete nationally, ranked by highest to lowest score until funds are depleted. All scoring will be based on the RBDG scoring criteria defined in 7 CFR 4280.435 with exception of the awarding of discretionary points to the project as stated in this notice.

Overview

Solicitation Opportunity Type: Rural Business Development Grant.

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance Number: 10.351.

Dates: The deadline for completed applications to be received in the USDA Rural Development State Office has been established as 4:30 p.m. local time July 6, 2021. A list of the USDA Rural Development State Offices can be found at: *https://www.rd.usda.gov/page/state-offices.*

A. Program Description

1. *Purpose of the Program.* The purpose of the program is to promote economic development and job creation projects through the awarding of grant funds to eligible entities. Applications that will use grant funds for either business opportunity or business enterprise projects, as defined, will compete equally for the available funds. Business opportunity projects may be used to establish business support centers or provide funds for job training and leadership development in rural areas. Business opportunity projects must be consistent with any local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area, and consistent with any Rural Development State or Tribal Strategic Plan. Business enterprise projects must be used to finance or develop small and emerging businesses in rural areas. Enterprise funded project purposes must be in compliance with 7 CFR 4280.417(a)(2) which includes the acquisition and development of land, access streets and roads, and the conversion or modernization of buildings, machinery, and equipment.

2. *Statutory and Regulatory Authority.* This program is authorized under 7 U.S.C. 1932(c) and implemented by 7 CFR part 4280, subpart E. Assistance provided under this subpart will be made to eligible entities and will be used for funding various business opportunity and business enterprise projects. Funds under this notice may only serve projects located in rural coastal areas.

Awards will be made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart E. Information required to be in the application package includes Standard Form (SF) 424, ''Application for Federal Assistance;'' a copy of applicants organizational documents; a proposed scope of work; Resolution of the Board of Directors; SF LLL, ''Restrictions on Lobbying;'' RD 400–1, ''Equal Opportunity Agreement;'' Assurance Statement for the Uniform Act; paperwork required in accordance with 7 CFR part 1970, ''Environmental Policies and 7 CFR 4280.427 Application.

3. *Definition of Terms.* The definitions applicable to this notice are published at 7 CFR 4280.403 and as noted:

Rural coastal community for the purposes of this notice is defined as an area or community bordering a river or ocean coastline.

A National Scenic Area is a federally designated area of outstanding natural and scenic value *that receives a level of environmental protection.*

4. *Application Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR part 4280, subpart E, and as indicated in this notice. The Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this notice.

B. Federal Award Information

Type of Awards: Grants.

Fiscal Year Funds: FY 2021.

Available Funds: $2,000,000.

Anticipated Award Date: September 30, 2021.

Performance Period: October 1, 2021, through September 30, 2023.

Renewal or Supplemental Awards: None.

C. Eligibility Information

1. *Eligible Applicants.*

Grants may be made to a Public Body/Government Entity; an Indian Tribe; or a nonprofit entity primarily serving rural areas. In accordance with 7 CFR 4280.416(d), applicants that are not delinquent on any Federal debt or not otherwise disqualified from participation in these Programs are

eligible to apply. The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended. Applicants must be registered in the System for Award Management (SAM) prior to submitting an application and maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. Applicants must ensure that they complete the Financial Assistance General Certifications and Representations in SAM. All other restrictions in this notice will apply.

The Agency requires information to make an eligibility determination through applications that must include, but are not limited to, the following:

(a) An original and one copy of SF 424, ''Application for Federal Assistance (For Non-construction).''

(b) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant.

(c) A proposed scope of work, including a description of the proposed project. Grant funds may be used for projects identified in § 4280.417(a) as either a business opportunity type grant or a business enterprise type grant. The scope of work must include details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation. In accordance with 7 CFR 4280.421, a project must reasonably be expected to be completed within 1 full year after it has begun.

(d) A written narrative that includes, at a minimum, the following items:

(1) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant eligible purposes;

(2) Area to be served and how it meets the criteria of a rural coastal community, identifying each governmental unit, *i.e.,* town, county, Indian reservation, etc., to be affected by the project;

(3) Description of how the project will coordinate Economic Development activities with other Economic Development activities within the project area;

(4) Business to be assisted, if appropriate; and Economic Development to be accomplished;

(5) An explanation of how the proposed project will result in newly created, increased or supported jobs in the area and the number of projected new and supported jobs within the next 3 years;

(6) A description of the applicant's demonstrated capability and experience in providing the proposed project assistance or similar Economic Development activities, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(7) The method and rationale used to select the areas and businesses that will receive the service;

(8) A brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used;

(9) Please note that no assistance or funding can be provided to hemp producers or processors unless they have a valid license issued from an approved State, Tribal or Federal plan as per Section 10113 of the Agriculture Improvement Act of 2018, Public Law 115–334, and note that verification of valid hemp licenses will occur at the time of award; and

(10) Other information the Agency may request to assist in making a grant award determination.

(e) The latest 3 years of financial information to show the applicant's financial capacity to carry out the proposed work. If the applicant is less than 3 years old, at a minimum, the information should include all balance sheet(s), income statement(s) and cash flow statement(s). A current audited report is required if available.

(f) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372. Applications from federally recognized tribes are exempt from this requirement.

(g) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the RBDG. If there is not a firm commitment in writing of the other funding, it may not be considered for leveraging and scoring purposes and the project must be determined as feasible without those funds.

(h) A budget which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the project.

(i) RBDG construction project grants must conform with 7 CFR part 1924, subpart A, for residential construction requirements, 7 CFR part 1942 subpart A, for commercial construction requirements and the 7 CFR 1970 environmental requirements.

3. General Processing and Scoring Provisions

The Agency will review each application for assistance in accordance with the priorities established in § 4280.435. The Agency will assign each application a priority rating and will select applications for funding based on the priority ratings and the total funds available to the program.

(a) The Agency will score each application based on the information contained in the application and its supporting information. All applications submitted for funding must contain sufficient information to permit the Agency to complete a thorough priority rating. Agency employees may not consider any information that is not provided by the applicant in writing for scoring purposes. Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements. Total possible points for the scoring criteria is 240 plus discretionary points that may be awarded by the Administrator with justification. Points will be awarded to an eligible application as follows:

(1) *Leveraging.* If the grant will fund a critical element of a larger program of Economic Development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded if Rural Development's funding is: (i) Less than 20 percent of the project costs—30 points; (ii) between 20 percent and up to 50 percent of the project—20 points; (iii) between 51 percent and up to 75 percent of the project—10 points.

(2) *Demographics.* Points will be awarded for each of the following criteria met by the community or communities that will receive the benefit of the grant, up to a total of 40 points from all categories: (i) Communities experiencing trauma due to a major natural disaster that occurred not more than 3 years prior to the filing of the application for assistance will be awarded 15 points; (ii) Communities that have suffered a loss of 20 percent or more in their total jobs caused by the closure of a military facility or other employer within the last 3 years will be awarded 15 points; (iii) Communities that have experienced long-term poverty as demonstrated by being a former Rural Empowerment Zone, Rural Economic Area Partnership Zone, Rural Enterprise Community, Champion Community, or a persistent poverty county as determined by USDA's Economic Research Service will receive 10 points;

and (iv) If the community has experienced long-term population decline as demonstrated by the latest three decennial censuses, 10 points will be awarded.

(3) *Population.* Points will be awarded if the proposed project(s) will be located in a community of: (i) Under 5,000 population—15 points; (ii) Between 5,000 and less than 15,000 population—10 points; or (iii) Between 15,000 and 25,000 population—5 points.

(4) *Unemployment.* If the proposed project(s) will be located in areas where the unemployment rate: (i) Exceeds the State rate by 25 percent or more—20 points will be awarded; (ii) exceeds the State rate by less than 25 percent—10 points will be awarded; or (iii) is equal to or less than the State rate—0 points will be awarded.

(5) *Median household income.* If the proposed project(s) will be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act for a family of 4 for the State is: (i) Less than the poverty line—25 points will be awarded; (ii) More than the poverty line but less than 65 percent of State MHI—15 points will be awarded; (iii) Between 65 and 85 percent of the State MHI—10 points will be awarded; or (iv) If the area has greater than 85 percent of the State MHI—0 points will be awarded.

(6) *Experience.* If the applicant provides evidence of successful experience in the type of activity proposed based on its current employees' resumes demonstrating: (i) 10 or more years of experience—30 points will be awarded; (ii) At least 5 but less than 10 years of experience—20 points will be awarded; (iii) At least 3 years but less than 5 years of experience—10 points will be awarded; or (iv) At least 1 but less than 3 years of experience—5 points will be awarded.

(7) *Small business start-up or expansion.* If the Applicant has evidence that small business development will be supported by startup or expansion as a result of the activities to be carried out under the grant by written evidence provided to the Agency from a small, or a small and emerging business that includes the number of jobs that will be supported and created, 5 points will be awarded for each letter up to a total of 25 points. Generic or duplicated letters are not acceptable; letters must address the specific business producing the letter, the connection to the project activities and further provide information relative to jobs to meet the criteria.

(8) *Jobs created or supported.* Points will be awarded if the anticipated development, expansion, or furtherance of business enterprises as a result of the proposed project will create and/or support existing jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business(es) to be assisted. Points will be awarded based on the ratio of jobs to be supported by the amount of grant funds. For projects supporting: (i) One job for less than $5,000 of grant funds—25 points will be awarded; (ii) one job for $5,000 but less than $10,000 of grant funds—20 points; (iii) one job for $10,000 but less than $15,000—15 points; (iv) one job for $15,000 but less than $20,000—10 points; or (v) one job for $20,000 but less than $25,000 of grant funds—5 points will be awarded.

(9) *Size of grant request.* Projects utilizing grant funds of: (i) Less than $100,000—25 points will be awarded; (ii) Grant requests of $100,000 to $200,000—15 points will be awarded; or (iii) applications for more than $200,000 but equal to or less than $500,000—10 points will be awarded.

(10) *Indirect cost.* If the applicant is not requesting grant funds to cover their administrative or indirect costs, 5 points will be awarded.

(11) *Discretionary points.* The Administrator may assign up to 50 discretionary points to any application that documents the project area was impacted by wildfires through issuance of a Major Disaster Declaration or Fire Management Assistance Declaration by the Federal Emergency Management Agency (FEMA), within four years of the application date. Higher points will be awarded to projects that are located in a federally designated Natural Scenic Area or will create jobs and economic opportunities in an area still suffering economic impacts from the wildfires.

(b) Unfunded applications. The Agency will notify unsuccessful eligible applicants who did not receive funding due to insufficient funds, in writing, that their application will not be funded.

D. Application and Submission Information

1. Address to Request Application Package.

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this notice to obtain copies of the application package.

Applications may be submitted in paper or electronic format to the appropriate Rural Development State Office and must be received by 4:30 p.m. local time on July 6, 2021. Applicants are encouraged to contact their respective Rural Development State Office for an email contact to submit an electronic application prior to the submission deadline date(s). All applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at: (866) 705–5711 or at *http://fedgov.dnb.com/webform.* Each applicant applying for grant funds (unless the applicant is an individual or Federal awarding agency that is excepted from the requirements under 2 CFR 25.110(b) or (c) or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to: (i) Be registered in the System for Award Management (SAM) before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

2. Content and Form of Application Submission

An application must contain all of the required elements and be submitted in one package. Each selection priority criterion outlined in 7 CFR 4280.427 must be addressed in the application. Failure to address any of the criterion will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart E, will be provided to any interested applicant making a request to a Rural Development State Office. An original copy of the application must be filed with the Rural Development State Office for the State where the project is located. For projects involving multiple states, the application must be filed in the Rural Development State Office where the Applicant is located.

The applicant documentation and forms needed for a complete application are located in the PROGRAM DESCRIPTION section of this notice, and 7 CFR part 4280, subpart E. There are no specific formats required per this notice, and applicants may request forms and addresses from the contacts listed in the **ADDRESSES** section of this notice. Any form that requires an original signature but is signed electronically in the application submission must be signed in ink by the authorized person prior to the disbursement of funds.

(a) There are no specific limitations on the number of pages or other formatting requirements other than those described in the PROGRAM DESCRIPTION section.

(b) There are no specific limitations on the number of pages, font size and type face, margins, paper size, number of copies, and the sequence or assembly requirements.

(c) The component pieces of this application should contain original signatures on the original application.

3. Submission Dates and Times

(a) Application Deadline Dates: Applications must be submitted to the Rural Development State Office no later than 4:30 p.m. (local time) July 6, 2021.

(b) The deadline date means that the completed application package must be received in the USDA Rural Development State Office by the established deadline date and time. All application documents identified in this notice are required in the submission to be considered a complete application.

(c) The Agency will determine the application receipt date for paper applications based on the actual date postmarked. The date of electronic application submissions will be the date received in the Rural Development State Office by the designated Agency staff person.

(d) If completed applications are not received by the deadline, the application will neither be reviewed nor considered for funding under any circumstances.

(e) Indirect costs will be permitted in accordance with applicable law and in accordance with 2 CFR part 200. Pre-Federal award costs will only be permitted with prior written approval by the Agency.

(f) Applicants may submit applications in hard copy or electronic format as previously indicated in the Application and Submission Information section of this notice. If the applicant wishes to hand deliver its application, the addresses for these deliveries can be located in the **ADDRESSES** section of this notice.

(g) If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

E. Application Review Information

1. Criteria

All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR part 4280, subpart E and in compliance with this notice. Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

2. Review and Selection Process

The Rural Development State Offices will review applications to determine if they are eligible for assistance based on applicant and project eligibility requirements contained in 7 CFR parts 4280.416 and 4280.417, respectively, and in this Notice. Funding of projects is subject to the Applicant's satisfactory submission of the items required by 7 CFR part 4280, subpart E and this Notice in addition to any conditions specifically outlined in any issued USDA Rural Development Letter of Conditions if available funds are to be awarded.

Applications will compete at the national level for available funds. Applications will be reviewed, prioritized by score, and funded by ranking each project in highest to lowest score order until available funds are exhausted.

F. Federal Award Administration Information

1. Federal Award Notices

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award can be approved and funded.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this Program can be found in 7 CFR part 4280, subpart E. Awards are subject to USDA grant regulations at 2 CFR part 400 which incorporated the Office of Management and Budget (OMB) regulation 2 CFR part 200.

All successful applicants will be notified by letter which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions. This letter is not an authorization to begin performance. If the applicant wishes to consider beginning performance prior to the grant being officially closed, all pre-award costs must be approved in writing and in advance by the Agency. The grant will be considered officially awarded when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the project.

Additional requirements that apply to grantees selected for these Programs can be found in 7 CFR part 4280, subpart E; the Grants and Agreements regulations of the U.S. Department of Agriculture codified in 2 CFR 400.1 to 400.2 and 2 CFR part 415 to 422, and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). The applicant will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for these Programs:

(a) Form RD 4280–2 ''Rural Business-Cooperative Service Financial Assistance Agreement.''

(b) Letter of Conditions.

(c) Form RD 1940–1, ''Request for Obligation of Funds.''

(d) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(e) SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(f) Grantees will use Form SF 270, ''Request for Advance or Reimbursement'' when requesting grant funds from the Agency.

3. Reporting

(a) A Financial Status Report and a Project Performance Activity Report will be required of all grantees on a quarterly basis until initial funds are expended and yearly thereafter, if applicable, based on the Federal fiscal year. Grantees must continuously monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees must submit an original of each report to the Agency no later than 30 days after the end of the quarter. The grantee will complete the project within the total time available to it in accordance with the Scope of Work and any necessary modifications thereof

prepared by the grantee and approved by the Agency. A final Project Performance Report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and supported as a result of the RBDG grant if applicable. The Project Performance Reports must include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period.

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation.

(3) Objectives and timetable established for the next reporting period.

(4) Any special reporting requirements, such as jobs supported and created, businesses assisted, or economic development which results in improvements in median household incomes, and any other specific requirements, should be placed in the reporting section of the Letter of Conditions.

(5) Within 90 days after the conclusion of the project, the grantee will provide a final Project Evaluation Report. The last quarterly payment will be withheld until the final report is received and approved by the Agency. Even though the grantee may request reimbursement on a monthly basis, the last 3 months of reimbursements will be withheld until a Final report, Project Performance Report, and Financial Status Report are received and approved by the Agency.

(b) In addition to any reports required by 2 CFR part 200 and 2 CFR 400.1 to 400.2 and 2 CFR part 415 to 422, the grantee must provide reports as required by 7 CFR part 4280, subpart E.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this notice.

H. Civil Rights Requirements

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

I. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice is approved by OMB under OMB Control Number 0570–0070.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *http://fedgov.dnb.com/webform.* Similarly, all applicants applying for grant funds must be registered in SAM prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov/SAM.* All recipients of Federal financial grant assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* 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.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992.Submit your completed form or letter to USDA by:—

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Email: OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021–10620 Filed 5–19–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–2021–CO–OP–0001]

Inviting Applications for the Delta Health Care Services Grant Program

AGENCY: Rural Business-Cooperative Service, USDA

ACTION: Notice of funding availability.

SUMMARY: This Notice of Funding Availability (Notice) announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2021 applications for the Delta Health Care Services (DHCS) grant program. Approximately $3 million is currently available for FY 2021. All funds must support projects located in persistent poverty counties as described in the Overview section of this Notice. The Agency will publish the program funding level on the Rural Development website *https://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* The purpose of this program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and economic development entities in the Delta Region.

DATES: Completed applications for grants must be submitted electronically by no later than midnight Eastern Standard Time July 19, 2021 through *http://www.grants.gov* to be eligible for grant funding. Please review the

Grants.gov website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. Late applications are not eligible for funding under this Notice and will not be evaluated.

ADDRESSES: You are encouraged to contact your USDA Rural Development State Office well in advance of the application deadline to discuss your Project and ask any questions about the application process. Contact information for State Offices can be found at *http://www.rd.usda.gov/contact-us/state-offices.*

Program guidance as well as application templates may be obtained at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants,* or by contacting your State Office. To submit an electronic application, follow the instructions for the DHCS funding announcement located at *http://www.grants.gov.* Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. You are strongly encouraged to file your application early and allow sufficient time to manage any technical issues that may arise.

FOR FURTHER INFORMATION CONTACT: Honie Turner, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Mail Stop 3201, Room 5803-South, Washington, DC 20250–3226, 202–720–1400 or email *CPgrants@usda.gov*.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: USDA, Rural Business-Cooperative Service.

Funding Opportunity Title: Delta Health Care Services Grant Program.

Announcement Type: Initial Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.874.

Dates: Application Deadline. Your electronic application must be received by *http://www.grants.gov* no later than Midnight Eastern Standard Time July 19, 2021, or it will not be considered for funding.

Hemp Related Projects

Please note that no assistance or funding can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as defined by the Agriculture Improvement Act of 2018, Public Law 115–334. Verification of valid hemp licenses will occur at the time of award.

Persistent Poverty Counties

The Consolidated Appropriations Act, 2021, SEC. 736 designates funding for projects in Persistent Poverty Counties. Persistent Poverty Counties as defined in SEC. 736 is ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States''. Another provision in Section 736 expands the eligible population in Persistent Poverty Counties to include any county seat of such a Persistent Poverty County that has a population that does not exceed the authorized population limit by more than 10 percent. Therefore, applications for projects in Persistent Poverty County seats with populations up to 55,000 (per the 2010 Census) are eligible. Funding of approximately $3 million is available to support Persistent Poverty Counties.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application. See the Application Guide for a full discussion of each item. For requirements of completed grant applications, refer to Section D of this document.

Executive Order (E.O.) 13175 Consultation and Coordination With Indian Tribal Governments

This Executive Order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this Notice does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this Notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Native American Coordinator at *aian@usda.gov* or (720) 544–2911.

Paperwork Reduction Act

The Paperwork Reduction Act requires Federal agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agency conducted an analysis to determine the number of applications the Agency estimates that it will receive under the DHCS grant program. It was determined that the estimated number of applications was fewer than nine and in accordance with 5 CFR 1320, thus OMB approval is not necessary at this time.

A. Program Description

The DHCS program is authorized by Section 379G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008u), as amended by the Agriculture Improvement Act of 2018 (Pub. L. 115–334). The primary objective of the program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grants are awarded on a competitive basis. The maximum award amount per grant is $1,000,000.

Definitions

The definitions you need to understand are as follows:

Academic Health and Research Institute—A combination of a medical school, one or more other health profession schools or educational training programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, public health), and one or more owned or affiliated teaching or health systems; or a health care nonprofit organization or health system, including nonprofit medical and surgical hospitals, that conduct health related research.

Conflict of Interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, Project Funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family

members. An example of conflict of interest occurs when the consortium member's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Consortium—A group of three or more entities that are regional Institutions of Higher Education, Academic Health and Research Institutes, and/or Economic Development Entities located in the Delta Region that have at least one year of prior experience in addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Federal Government.

Delta Region—The 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.) To view the areas identified within the Delta Region visit *http://dra.gov/about-dra/dra-states.*

Economic Development Entity—Any public or non-profit organization whose primary mission is to stimulate local and regional economies within the Delta Region by increasing employment opportunities and duration of employment, expanding or retaining existing employers, increasing labor rates or wage levels, reducing outmigration, and/or creating gains in other economic development-related variables such as land values. These activities shall primarily benefit low- and moderate-income individuals in the Delta Region.

Health System—The complete network of agencies, facilities, and all providers of health care to meet the health needs of a specific geographical area or target populations.

Institution of Higher Education—A postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a two year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

Nonprofit Organization—An organization or institution, including an accredited institution of higher education, where no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Project—All activities funded by the DHCS grant.

Project Funds—Grant funds requested plus any other contributions to the proposed Project.

Rural and rural area—Any area of a State: (1) Not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and (2) The contiguous and adjacent urbanized area; (3) Urbanized areas that are rural in character as defined by 7 U.S.C. 1991(a)(13); and (4) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

State—Includes each of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

B. Federal Award Information

Type of Award: Competitive Grant.
Total Funding: $3,000,000.
Maximum Award: $1,000,000.
Minimum Award: $50,000.
Project Period: Up to 24 months.
Anticipated Award Date: September 30, 2021.

C. Eligibility Information

Applicants must meet all the following eligibility requirements. Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. Applicants that fail to submit the required elements by the application deadline will be deemed ineligible and will not be evaluated further. Information submitted after the application deadline will not be accepted.

1. Eligible Applicants

Grants funded through DHCS may be made to a Consortium as defined in Paragraph A of this Notice. One member of the Consortium must be designated as the lead entity by the other members of the Consortium and have legal authority to contract with the Federal Government.

The lead entity is the recipient (see 2 CFR 200.86) of the DHCS grant funds and accountable for monitoring and reporting on the Project performance and financial management of the grant. It is expected that the recipient will make subawards in the form of a grant, cooperative agreement, or contract, as appropriate, to the other members of the Consortium. If a grant or cooperative agreement is awarded, the organization receiving the subaward is a subrecipient (see 2 CFR 200.93), and the recipient is responsible for complying with all applicable requirements of 2 CFR part 200, including provisions for making and monitoring an award. If a contract is awarded, the organization receiving the subaward is a contractor, and the recipient is responsible for following its written procurement procedures and complying with the Federal Acquisition Regulation. Both subrecipients and contractors are required to comply with all applicable laws and regulations, including performance and financial reporting, as described in their award document.

(a) An applicant is ineligible if they do not submit ''Evidence of Eligibility'' and ''Consortium Agreements'' as described in Section D.2. of this Notice.

(b) An applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the DO NOT PAY System to verify this information.

(c) Any corporation (1) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (2) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is

not necessary to protect the interests of the Government.

(d) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6.

(e) Applications will be deemed ineligible if the application is not complete in accordance with the requirements stated in Section C.3.

2. Cost Sharing or Matching

Matching funds are not required. However, if you are adding any other contributions to the proposed Project, you must provide documentation indicating who will be providing the matching funds, the amount of funds, when those funds will be provided, and how the funds will be used in the Project budget. Examples of acceptable documentation include: A signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the Project. The matching funds you identify must be for eligible purposes and included in your work plan and budget. Additionally, expected program income may not be used as matching funds at the time you submit your application. If you choose, you may use a template to summarize the matching funds. The template is available either from your State Office or the program website at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

3. Other Eligibility Requirements

(a) *Use of Funds.* Your application must propose to use Project Funds for eligible purposes. Eligible Project purposes include the development of: (1) Health care services; (2) health education programs; (3) health care job training programs; and (4) the development and expansion of public health-related facilities in the Delta Region.

(b) *Project Eligibility.* The proposed Project must take place within the Delta Region as defined in this Notice. However, the applicant need not propose to serve the entire Delta Region. All funds must support projects located in persistent poverty counties as described in the Overview section of this Notice.

(c) *Project Input.* Your proposed Project must be developed based on input from local governments, public health care providers, and other entities in the Delta Region.

(d) *Grant Period Eligibility.* All awards are limited to up to a 24-month grant period based upon the complexity of the Project. Your proposed grant period should begin no earlier than October 1, 2021 and should end no later than 24 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the grant agreement is executed by the Agency—and your grant period end date will be adjusted accordingly. Your Project activities must begin within 90 days of the date of award. If you request funds for a time period beginning before October 1, 2021, and/or ending later than 24 months from that date, your application will be ineligible. The length of your grant period should be based on your Project's complexity, as indicated in your application work plan.

(e) *Multiple Application Eligibility.* The Consortium, including its members, is limited to submitting one application for funding under this Notice. We will not accept applications from Consortiums that include members who are also members of other Consortiums that have submitted applications for funding under this Notice. If we discover that a Consortium member is a member of multiple Consortiums with applications submitted for funding under this Notice, all applications will be considered ineligible for funding.

(f) *Satisfactory Performance Eligibility.* If you have an existing DHCS award, you must be performing satisfactorily to be considered eligible for a new DHCS award. Satisfactory performance includes being up to date on all financial and performance reports as prescribed in the grant award, and current on tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If you have any unspent grant funds on DHCS awards prior to FY 2018, your application will not be considered for funding. If your FY 2019 or FY 2020 award has unspent funds of 50 percent or more than what your approved work plan and budget projected at the time your FY 2021 application is evaluated, your application may not be considered for funding. The Agency will verify the performance status of FY 2019 and 2020 awards and make a determination after the FY 2021 application period closes. The Agency understands that recipients may have had a loss of operations due to COVID–19 and will consider providing flexibility in terms of fund utilization on previous awards with acceptable justification of delays resulting from the COVID–19 pandemic.

(g) *Completeness Eligibility.* Your application must provide all the information requested in Section D.2. of this Notice. Applications lacking sufficient information to determine eligibility and scoring will be deemed ineligible and will not be considered for scoring.

(h) *Indirect Costs.* Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. Address To Request Application Package

The application template for this funding opportunity is located at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* Use of the application template is strongly recommended to assist you with the application process. You may also contact your State Office for more information. Contact information for State Offices is located at *http://www.rd.usda.gov/contact-us/state-offices.*

2. Content and Form of Application Submission

You must submit your application electronically through *Grants.gov.* Your application must contain all required information.

To apply electronically, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept applications through mail, courier delivery, in-person delivery, email or fax.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the CFDA number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site, as well as the hours of operation.

To use *Grants.gov,* you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov.*

You must submit all application documents electronically through *Grants.gov.* Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After applying electronically through *Grants.gov,* you will receive an

automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

Your application must also contain the following required forms and proposal elements:

(a) Form SF–424, ''Application for Federal Assistance.'' The application for Federal assistance must be completed by the lead entity as described in Section C.1. of this Notice. Your application must include your DUNS number and SAM Commercial and Government Entity (CAGE) code and expiration date (or evidence that you have begun the SAM registration process). Because there are no specific fields for a CAGE code and expiration date, you may identify them anywhere you want to on the form If you do not include the CAGE code and expiration date and the DUNS number in your application, it will not be considered for funding. The form must be signed by an authorized representative.

(b) Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

(c) Form SF–424C, ''Budget Information—Construction Programs.'' This form must be completed, signed, and submitted as part of the application package for construction Projects.

(d) Executive Summary. A summary of the proposal, not to exceed one page, briefly describing the Project, tasks to be completed, and other relevant information that provides a general overview of the Project must be provided.

(e) Evidence of Eligibility. Evidence of the Consortium's eligibility to apply under this Notice must be provided. This section must include a detailed summary demonstrating that the applicant is a Consortium as defined in paragraph A of this Notice and explain how each Consortium member meets the definition of an eligible entity as defined under Definitions of this Notice.

(f) Consortium Agreements. The application must include a formal written agreement with each Consortium member that addresses the negotiated arrangements for administering the Project to meet Project goals, the Consortium member's responsibilities to comply with administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies, and facilitate a smooth functioning collaborative venture. Under the agreement, each Consortium member must perform a substantive role in the Project and not merely serve as a conduit of funds to another party or parties. This agreement must be signed by an authorized representative of the lead entity and an authorized representative of each partnering consortium entity.

(g) Scoring Criteria. Each of the scoring criteria in this Notice must be addressed in narrative form. Failure to address each scoring criterion will result in the application being determined ineligible.

(h) Performance Measures. The Agency has established annual performance measures to evaluate the DHCS program. Estimates on the following performance measures, as part of your application, must be provided:

(1) Number of businesses assisted;

(2) Number of jobs created;

(3) Number of jobs saved; and

(4) Number of individuals assisted/trained.

It is permissible to have a zero in a performance element. When calculating jobs created, estimates should be based upon actual jobs to be created by your organization as a result of the DHCS funding or actual jobs to be created by businesses as a result of assistance from your organization. When calculating jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive DHCS funding or actual jobs that would have been lost without assistance from your organization.

You can also suggest additional performance elements for example where job creation or jobs saved may not be a relevant indicator. These additional elements should be specific, measurable performance elements that could be included in an award document.

(i) Financial Information and Sustainability. Current financial statements and a narrative description demonstrating sustainability of the Project, all of which show sufficient resources and expertise to undertake and complete the Project and how the Project will be sustained following completion must be provided. Applicants must provide three years of pro-forma financial statements for the Project.

(j) Evidence of Legal Authority and Existence. The lead entity must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and perform the activities proposed under the grant application.

(k) Service Area Maps. Maps with sufficient detail to show the area that will benefit from the proposed facilities and services and the location of the facilities improved or purchased with grant funds, if applicable, must be provided.

(l) You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. You must also certify that you are not delinquent on the payment of Federal income taxes, or any Federal debt. To satisfy the Certification requirement, you should include this statement in your application: ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property, is not delinquent on the payment of Federal income taxes, or any Federal debt, and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.

(m) Environmental information necessary to support the Agency's environmental finding. Required information can be found in 7 CFR part 1970, specifically in Subpart B, Exhibit C and Subpart C, Exhibit B. These documents can be found here: *http://www.rd.usda.gov/publications/regulations-guidelines/instructions.* Construction related activities funded by RD must comply with State and local building codes. Depending on the construction actions anticipated, an appropriate 7 CFR 1970 compliant environmental document will need to be submitted and approved, prior to commencement of construction. Non-construction Projects applying under this Notice are hereby classified as Categorical Exclusions according to 7 CFR 1970.53(b), the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses, which do not require any additional documentation.

3. DUNS Number and SAM Registration

To be eligible (unless you are exempted under 2 CFR 25.110(b), (c) or (d)), you are required to:

(a) Provide a valid DUNS number in your application, which can be obtained at no cost via a toll-free request line at (866) 705–5711;

(b) Register in SAM before submitting your application. You may register in SAM at no cost at *https://www.sam.gov/SAM/*. You must provide your SAM CAGE Code and expiration date. When registering in SAM, you must indicate you are applying for a Federal financial

assistance project or program or are currently the recipient of funding under any Federal financial assistance project or program; and

(c) The SAM registration must remain active with current information at all times while the Agency is considering an application or while a Federal grant award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

If you have not fully complied with all applicable DUNS and SAM requirements, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use that determination as a basis for making an award to another applicant. Please refer to Section F. 2 for additional submission requirements that apply to grantees selected for this program.

4. Submission Date and Time

Application Deadline Date: July 19, 2021.

Explanation of Deadline: Electronic applications must be RECEIVED by *http://www.grants.gov* by midnight Eastern Standard Time July 19, 2021, to be eligible for funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. *Grants.gov* will not accept applications submitted after the deadline.

5. Intergovernmental Review

Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/*. If your State has a SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC or you do not want to submit your application to the SPOC, your State Office will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Honie Turner, Program Management Division at 202–720–1400 or *CPgrants@usda.gov* if you have questions about this process.

6. Funding Restrictions

Project Funds may not be used for ineligible purposes. In addition, you may not use Project Funds for the following:

(a) To duplicate current services or to replace or to substitute support previously provided. However, Project Funds may be used to expand the level of effort or a service beyond what is currently being provided;

(b) To pay for costs to prepare the application for funding under this Notice;

(c) To pay for costs of the Project incurred prior to the effective date of the period of performance;

(d) To pay expenses for applicant employee training not directly related to the Project;

(e) Fund political activities;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) Engage in any activities that are considered a Conflict of Interest, as defined by this Notice; or

(i) Fund any activities prohibited by 2 CFR 200;

In addition, your application will not be considered for funding if it does any of the following:

(1) Requests more than the maximum grant amount; or

(2) Proposes ineligible costs that equal more than 10 percent of the Project Funds.

We will consider your application for funding if it includes ineligible costs of 10 percent or less of total Project Funds, if it is determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs before the Agency will make the grant award or the amount of the grant award will be reduced accordingly. If we cannot determine the percentage of ineligible costs, your application will not be considered for funding.

7. Other Submission Requirements

(a) Applications will not be accepted if the text is less than 11-point font. You must submit your application electronically, through *Grants.gov.* You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.* You must follow the instructions for this funding announcement at *http://www.grants.gov.* A password is not required to access the website.

(b) National Environmental Policy Act. This Notice has been reviewed in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.'' We have determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial programs is categorically excluded in the Agency's National Environmental Policy Act (NEPA) regulation found at 7 CFR 1970.53(f). We have determined that this Notice does not constitute a major Federal action significantly affecting the quality of the human environment.

The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

(c) Civil Rights Compliance Requirements. All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

E. Application Review Information

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. Applications will be funded in rank order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion.

1. Scoring Criteria

All eligible and complete applications will be evaluated based on the following criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each

individual scoring criterion. DHCS is a competitive program, so you will receive scores based on the quality of your responses. Simply addressing the criteria will not guarantee higher scores. The total points possible for the criteria are 110. The minimum score requirement for funding is 60 points. It is at the Agency's discretion to fund applications with a score of 59 points or less if it is in the best interest of the Federal Government.

(a) *Community Needs and Benefits Derived from the Project (maximum of 30 points).* A panel of USDA employees will assess how the Project will benefit the residents in the Delta Region. This criterion will be scored based on the documentation in support of the community needs for health services and public health-related facilities and the benefits to people living in the Delta Region derived from the implementation of the proposed Project. It should lead clearly to the identification of the Project participant pool and the target population for the Project and provide convincing links between the Project and the benefits to the community to address its health needs. You must discuss the:

(1) Health care needs/issues/challenges facing the service area and explain how the identified needs/issues/challenges were determined. Discussion should also identify problems faced by the residents in the region.

(2) Proposed assistance to be provided to the service area and how the Project will benefit the residents in the region.

(3) Implementation plan for the Project and provide milestones which are well-defined and can be realistically completed.

(4) Expected outcomes of the proposed Project and how they will be tracked and monitored. You should attempt to quantify benefits in terms of outcomes from the Project; that is, ways in which peoples' lives, or the community, will be improved. Provide estimates of the number of people affected by the benefits arising from the Project.

(b) *The Project Management and Organization Capability (maximum of 30 points).* A panel of USDA employees will evaluate the Consortium's experience, past performance, and accomplishments addressing health care issues to ensure effective Project implementation. This criterion will be scored based on the documentation of the Project's management and organizational capability. You must discuss:

(1) Your organization's management and fiscal structure including well-defined roles for administrators, staff, and established financial management systems.

(2) Relevant qualifications, capabilities, and educational background of the identified key personnel (at a minimum the Project Manager) who will manage and implement programs.

(3) Your organization's current successful and effective experience (or demonstrated experience within the past five years) addressing the health care issues in the Delta Region.

(4) Your organization's experience managing grant-funded programs.

(5) The extent to which administrative/management costs are balanced with funds designated for the provision of programs and services.

(6) The extent and diversity of eligible entity types within the applicant's Consortium of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region.

(c) *Work Plan and Budget (maximum of 30 points).* You must provide a work plan and budget that includes the following: (1) The specific activities, such as programs, services, trainings, and/or construction-related activities for a facility to be performed under the Project; (2) the estimated line item costs associated with each activity, including grant funds and other necessary sources of funds; (3) the key personnel who will carry out each activity (including each Consortium member's role); and (4) the specific time frames for completion of each activity.

An eligible start and end date for the Project and for individual Project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. You must show the source and use of both grant and other contributions for all tasks. Other contributions must be spent at a rate equal to, or in advance of, grant funds.

A panel of USDA employees will evaluate your work plan for detailed actions and an accompanying timetable for implementing the proposal. Clear and comprehensive work plans detailing all project goals, tasks, timelines, costs, and responsible personnel in a logical and realistic manner will result in a higher score.

(d) *Local Support (maximum 10 points).* A panel of USDA employees will evaluate your application for local support of the proposed Project. The application must include documentation detailing support solicited from local government, public health care providers, and other entities in the Delta Region. Evidence of support can include; but is not limited to surveys conducted amongst Delta Region residents and stakeholders, notes from focus groups, or letters of support from local entities.

(e) *Administrator Discretionary Points (maximum of 10 points).* The Administrator may choose to award up to 10 points to support geographic distribution of funds.

2. Review and Selection Process

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. The review panel will convene to reach a consensus on the scores for each of the eligible applications. The Administrator may choose to award up to 10 Administrator discretionary points based on criterion (e) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is ranked and not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices

If you are selected for funding, you will receive a signed notice of Federal award by postal or electronic mail, containing instructions on requirements necessary to proceed with execution and performance of the award.

If you are not selected for funding, you will be notified in writing via postal or electronic mail and informed of any review and appeal rights. Funding of successfully appealed applications will be limited to available FY 2021 funding.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 2 CFR parts 25, 170, 180, 200, 400, 415, 417, 418, and 421; and 48 CFR 31.2, and successor regulations to these parts. All recipients of Federal financial assistance are required to report information about first tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in

place to comply with the Federal Funding Accountability and Transparency Act reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)). These regulations may be obtained at *https://www.ecfr.gov/cgi-bin/ECFR?page=browse.*

The following additional requirements apply to grantees selected for this program:

(a) Execution of an Agency approved Grant Agreement.

(b) Acceptance of a written Letter of Conditions.

(c) Submission of Form RD 1940–1, ''Request for Obligation of Funds.''

(d) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(e) SF–LLL, ''Disclosure of Lobbying Activities'' if applicable.

3. Reporting

After grant approval and through grant completion, you will be required to provide the following:

a. A SF–425, ''Federal Financial Report,'' and a project performance report will be required on a semiannual basis (due 30 working days after end of the semiannual period). For the purposes of this grant, semiannual periods end on June 30th and December 31st. The project performance reports shall include a comparison of actual accomplishments to the objectives established for that period;

b. Reasons why established objectives were not met, if applicable;

c. Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

d. Objectives and timetable established for the next reporting period.

e. Provide a final project and financial status report within 90 days after the expiration or termination of the grant.

f. Provide outcome project performance reports and final deliverables.

G. Agency Contacts

For general questions about this announcement and for program Technical Assistance, please contact the appropriate State Office at *http://www.rd.usda.gov/contact-us/state-offices.* You may also contact Honie Turner, Program Management Division, Direct Programs Branch, Rural Business-Cooperative Service, USDA at (202) 720–1400 or email *CPgrants@usda.gov.* You are also encouraged to visit the application website for application tools, including an application template. The website address is: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

H. Other Information

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* 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.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; and

(2) *Email: OAC@usda.gov.*

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021–10610 Filed 5–19–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2020 Public Use Microdata Areas Program

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 6, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: 2020 Public Use Microdata Areas Program.

OMB Control Number: 0607–XXXX.

Form Number(s): None.

Type of Request: Regular submission, New Information Collection Request.

Number of Respondents: 52.

Average Hours per Response: 40.

Burden Hours: 2,080.

Needs and Uses: Public Use Microdata Areas, or PUMAs, are non-overlapping, statistical geographic areas that partition each state or equivalent entity into geographic areas containing no fewer than 100,000 people each. They cover the entirety of the United States, Puerto Rico, Guam, and the U.S. Virgin Islands.[1] PUMAs are a higher level of geography than census tract, or even county in some instances, and provide all data users with another level of geography for data analysis.

The Census Bureau is the only federal agency to create PUMAs. Every ten

[1] States or equivalent entities with less than 200,000 persons are not eligible to participate because their populations do not meet the minimum threshold to delineate more than one PUMA.

years the Census Bureau offers State Data Centers the opportunity to delineate PUMAs for the tabulation and dissemination of decennial census and American Community Survey (ACS) Public Use Microdata Sample (PUMS) data as well as for the dissemination of period estimates from both the ACS and Puerto Rico Community Survey. PUMS data are valuable to state and local planning agencies/offices, as well as students, for use in long-range planning and research projects. PUMS data contain individual records of the characteristics for a sample of persons and households. They show a full range of population and housing unit responses collected on individual ACS questionnaires, for a subsample of ACS housing units and group quarters persons. Without PUMAs and PUMS data, the data community would not be able to create custom tables and statistics not available through pre-tabulated (or summary) data products.

The Census Bureau invites State Data Centers from each state, the District of Columbia, and Puerto Rico to delineate PUMAs, using the decennial census population counts and updated census tract geography as critical inputs to delineation. The Census Bureau asks State Data Centers to involve interested data users, such as those in tribal, state, and local (*e.g.,* county, incorporated place, and town/township) governments, as well as regional planning agencies or organizations to ensure that the PUMAs meet the needs of a variety of data users. Collaboration between State Data Centers and other interested data users is especially important for areas with population exceeding 100,000. Though collaboration is encouraged, the State Data Centers are the official participants for this program and must coordinate the delineation suggestions from other interested data users. The Census Bureau accepts PUMA delineation proposals for the 2020 Public Use Microdata Areas (PUMA) program (*e.g.,* the 2020 PUMA) only from each state's respective State Data Center.

The Geographic Update Partnership Software (GUPS) is a geographic information system developed by the Census Bureau and provided complimentary to State Data Centers and interested data users. It contains tools and options specifically designed to assist with the delineation of PUMAs, allows for the sharing of work performed by multiple participants to facilitate a collaborative effort, and prepares the delineated PUMAs properly for submission to the Census Bureau. The Census Bureau only accepts submissions of PUMAs delineated and exported using GUPS.

There are three options for delineating PUMAs within GUPS. State Data Centers can choose to create them from scratch (*e.g.,* Create a new blank PUMA layer), import them from a census tract equivalency file (*e.g.,* Import a PUMA tabular equivalency file), or import them from a locally-generated PUMA shapefile (*e.g.,* Import a PUMA shapefile). For added flexibility, participants can use more than one option to delineate PUMAs as they conduct their work. Each State Data Center works closely with the interested data users assisting with PUMA delineation to determine the best delineation method(s) for their state or specific situation. Once the State Data Centers complete the delineation process, they submit their PUMA delineations using the Secure Web Incoming Module (SWIM). SWIM is the only Census Bureau authorized submission method for the 2020 PUMA. The participant guide, which will be available for download from the 2020 PUMA website when the program begins in September 2021, includes instructions for using both GUPS and SWIM. Locate the 2020 PUMA website at: *www.census.gov/programs-surveys/geography/guidance/geo-areas/pumas/2020pumas.html.*

To prepare State Data Centers for their involvement in the 2020 PUMA, the Census Bureau provided an overview of the program during the State Data Center's annual meeting in October 2020. During that overview, the Census Bureau informed State Data Centers of their opportunity to review and provide comments on the proposed criteria and guidelines for PUMAs. The Census Bureau will respond to comments received on the proposed criteria prior to posting the final criteria and guidelines on the PUMA website for use during the program.

Following the October 2020 meeting, the Census Bureau emailed each of the State Data Centers to establish a primary and secondary point of contact for the 2020 PUMA, inquire about existing SWIM account(s), and gauge interest in GUPS user acceptance testing. These points of contact will receive the official program announcement email in September 2021, that will include instructions to download the 2020 PUMA materials from the PUMA website and begin delineation. After the program announcement email is distributed, the Census Bureau will communicate with the points of contact to confirm receipt of the email, answer any questions they may have, and ensure an awareness of the material availability on the PUMA website. The Census Bureau will also reinforce the program's 90-day review timeframe and overall schedule.

Once the program is underway, the Census Bureau will conduct a minimum of two online trainings to support PUMA delineation and will provide technical support to participants throughout the duration of the program.

The Census Bureau will accept PUMA submissions from State Data Centers through January 2022. If questions arise regarding a submission during processing, the Census Bureau will confer with the points of contact to resolve them. The resulting, finalized PUMAs will be publicly available online to all data users at the conclusion of the Census Bureau's processing in the summer of 2022.

Affected Public: State Data Centers representing each state, the District of Columbia, and Puerto Rico.

Frequency: Once per decade, following the decennial census.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C. Section 6.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–10666 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–46–2021]

Approval of Subzone Expansion; Swagelok Company, Eastlake, Ohio

On March 15, 2021, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Cleveland Cuyahoga County Port Authority, grantee of FTZ 40, requesting an expansion of Subzone

40I subject to the existing activation limit of FTZ 40, on behalf of Swagelok Company, in Eastlake, Ohio.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 15455–15456, March 23, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 40I was approved on May 14, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 40's 2,000-acre activation limit.

Dated: May 14, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–10614 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–40–2021]

Foreign-Trade Zone (FTZ) 107—Polk County, Iowa; Notification of Proposed Production Activity Cycle Force Group, LLC (Electric and Non-Electric Cycles), Ames, Iowa

Cycle Force Group, LLC (Cycle Force) submitted a notification of proposed production activity to the FTZ Board for its facilities in Ames, Iowa. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 13, 2021.

A separate application has been submitted for FTZ designation at the company's facilities under FTZ 107. The facilities are used for production of bicycles, electric bicycles, tricycles, and quadracycles. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Cycle Force from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Cycle Force would be able to choose the duty rates during customs entry procedures that apply to bicycles (electric, children's, BMX, mountain, folding, and road racing), tricycles, and quadracycles (duty rate ranges from duty-free to 11.00%). Cycle Force would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Plastic water bottles; cables (derailleur; brake); handlebar tape (plastic; rubber; leather; suede); bicycle tires; rubber rim strips (natural; synthetic); bicycle inner tubes; baskets (woven wicker; plastic; steel wire); glass mirrors; bicycle chains; carriers and racks (iron; steel; aluminum; steel wire; vinyl covered wire); bike spoke nipples (brass; aluminum); non-electric bells; electric bike motors; lithium-ion batteries; battery or generator powered lighting; complete frames (aluminum; steel; magnesium; carbon fiber); front forks for mountain, road, BMX, and children's bicycles; alloy or steel eyelets, bosses, and plugs for frame building; pre-cut sets of steel tubing for frames; rims and spokes (aluminum; steel; carbon fiber); aluminum hubs (quick-release; two-speed; three-speed); hubs with more than three speeds (steel; composite); freewheel sprockets (single speed; multi-speed); brakes and brake levers (caliper; cantilever); brakes (hub type; disk; linear pull); saddles or seats for bicycles; pedals; cotterless cranks; levers (click-style shift; derailleur); twist grip shifters; derailleurs; aluminum handlebar stems; shifters for three-speed hubs; fenders (polycarbonate; plastic; steel; aluminum; lead); handlebars (steel; aluminum; carbon fiber); kickstands (steel; aluminum); rear suspension shocks; chain guards; chain tension adjustors; bicycle headsets for stems and forks; wide-angle reflectors; seat posts; chain tensioners; and, assembled wheels (duty rate ranges from duty-free to 10%). The request indicates that certain materials/components are 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 June 29, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: May 17, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–10676 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–130]

Certain Walk-Behind Lawn Mowers and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain walk-behind lawn mowers and parts thereof (lawn mowers) from the People's Republic of China (China).

DATES: Applicable May 20, 2021.

FOR FURTHER INFORMATION CONTACT: Moses Song or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7885 or (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is MTD Products, Inc. In addition to the Government of China (GOC), the mandatory respondents in this investigation are Zhejiang Amerisun Technology Co., Ltd. (Zhejiang Amerisun) and Ningbo Daye Garden Machinery Co., Ltd. (Ningbo Daye).

On October 30, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* and aligned this final determination with the final antidumping duty (AD) determination, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4)(i).[1] On

[1] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final*

Continued

March 5, 2021, Commerce issued a Post-Preliminary Determination regarding the petitioner's creditworthiness allegations.[2] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.[3] 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 *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

Scope of the Investigation

The products covered by this investigation are lawn mowers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this and the concurrent AD investigation, Commerce received scope comments from interested parties. On December 22, 2020, Commerce issued a Preliminary Scope Decision Memorandum to address these comments, and modified the scope language as it appeared in the *Preliminary Determination* to address the scope overlap issue between the lawn mowers proceedings and the antidumping and countervailing duty investigations of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from China.[4] We received comments from interested parties on the Preliminary Scope Decision Memorandum, which we address in the Final Scope Decision Memorandum.[5] In the Final Scope Decision Memorandum, Commerce is not modifying the scope language as it appeared in the Preliminary Scope Decision Memorandum. *See* Appendix I for the final scope of this investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties raised is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce is relying, in part, on facts otherwise available, including adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of AFA, *see* the *Preliminary Determination* and the section ''Use of Facts Otherwise Available and Adverse Inference'' in the accompanying Issues and Decision Memorandum.[7]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, as well as additional information collected in questionnaires issued subsequent to the *Preliminary Determination,* and our Post-Preliminary Determination,[8] we made certain changes to subsidy rate calculations for Zhejiang Amerisun and Ningbo Daye. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[9]

All-Others Rate

We continue to calculate the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents (Zhejiang Amerisun and Ningbo Daye) using each company's publicly-ranged data for the value of their exports to the United States of subject merchandise.[10]

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Zhejiang Amerisun Technology Co., Ltd	20.98
Ningbo Daye Garden Machinery Co., Ltd.[11]	14.17
All Others	16.29

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this final determination within five days of its public announcement, or if there is no public announcement, within five days

Determination with Final Antidumping Duty Determination, 85 FR 68848 (October 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Analysis of Uncreditworthiness Allegations,'' dated March 5, 2021 (Post-Preliminary Determination).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated December 22, 2020 (Preliminary Scope Decision Memorandum).

[5] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments Decision Memorandum for the Final Determinations'' dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Preliminary Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences''; *see also* Issues and Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences.''

[8] *See* Post-Preliminary Determination.

[9] *See* Commerce's Letters, ''Countervailing Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: In Lieu of On-Site Verification Questionnaire,'' dated February 27, 2021; and ''Countervailing Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: In Lieu of On-Site Verification Questionnaire—Ningbo Daye Garden Machinery Co., Ltd.,'' dated March 5, 2021.

[10] *See Preliminary Determination,* 85 FR at 68849; *see also* Memorandum, ''Countervailing Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China; Revised All-Others Calculation for the Final Determination,'' dated concurrently with this memorandum.

[11] Commerce has found that the following company is cross-owned with Ningbo Daye Garden Machinery Co., Ltd.: Zhejiang Jindaye Holdings Limited. This rate applies to all cross-owned companies.

of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from China that were entered, or withdrawn from warehouse, for consumption, effective October 30, 2020, which is the date of publication of the *Preliminary Determination* in the **Federal Register**.

In accordance with section 703(d) of the Act, effective February 27, 2021, we instructed CBP to discontinue the suspension of liquidation of all entries at that time, but to continue the suspension of liquidation of all entries between October 30, 2020, and February 26, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, and continue to require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of the final affirmative determination that countervailable subsidies are being provided to producers and exporters of lawn mowers from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured or threatened with material injury. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: May 14, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation consists of certain rotary walk-behind lawn mowers, which are grass-cutting machines that are powered by internal combustion engines. The scope of this investigation covers certain walk-behind lawn mowers, whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to mowing.

Walk-behind lawn mowers within the scope of this investigation are only those powered by an internal combustion engine with a power rating of less than 3.7 kilowatts. These internal combustion engines are typically spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a maximum displacement of 196cc. Walk-behind lawn mowers covered by this scope typically must be certified and comply with the Consumer Products Safety Commission Safety Standard For Walk-Behind Power Lawn Mowers under 16 CFR part 1205. However, lawn mowers that meet the physical descriptions above, but are not certified under 16 CFR part 1205 remain subject to the scope of this proceeding.

The internal combustion engines of the lawn mowers covered by this scope typically must comply with and be certified under Environmental Protection Agency air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. However, lawn mowers that meet the physical descriptions above but that do not have engines certified under 40 CFR part 1054 or other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished and/or unassembled lawn mower means, at a minimum, a sub-assembly comprised of an engine and a cutting deck shell attached to one another. A cutting deck shell is the portion of the lawn mower—typically of aluminum or steel—that houses and protects a user from a rotating blade. Importation of the subassembly whether or not accompanied by, or attached to, additional components such as a handle, blade(s), grass catching bag, or wheel(s) constitute an unfinished lawn mower for purposes of this investigation. The inclusion in a third country of any components other than the mower subassembly does not remove the lawn mower from the scope. Lawn mowers that meet the physical description above are covered by the scope of this investigation regardless of the origin of its engine, unless such lawn mowers contain an engine that is covered by the scope of the ongoing proceedings on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from China. If the proceedings on small vertical engines from China are terminated, the lawn mowers containing small vertical engines from China will be covered by the scope of this proceeding.

The lawn mowers subject to this investigation are typically at subheading: 8433.11.0050. Lawn mowers subject to this investigation may also enter under Harmonized Tariff Schedule of the United States (HTSUS) 8407.90.1010 and 8433.90.1090. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Subsidies Valuation
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Analysis of Programs
VIII. Analysis of Comments
Comment 1: Whether Individually-Owned Cold-Rolled Steel Input Suppliers are ''Authorities''
Comment 2: Whether the Application of Facts Available is Warranted in Constructing Benchmark Inland Freight Charges Used for the Benefit Calculation for Zhejiang Amerisun under the Provision of Cold-Rolled Steel for Less Than Adequate Remuneration Program
Comment 3: Whether Commerce Committed a Ministerial Error in the Benefit Calculation for a Certain Subsidy Reported by Zhejiang Amerisun
Comment 4: Whether Commerce Should Remove Inland Freight and Value Added Tax from the Cold-Rolled Steel Benchmark under the Provision of Cold-Rolled Steel for Less Than Adequate Remuneration Program
Comment 5: Whether Commerce Improperly Found that Zhejiang Dobest was Uncreditworthy in 2017 and 2018
Comment 6: Whether Commerce Should Find the Export Buyers Credit Program

to be Countervailable Based on Adverse Facts Available
Comment 7: Whether Certain Parties did not Receive Due Process and Whether Commerce Should Modify the Cash Deposit Rates for Certain Parties
Comment 8: Whether the Provision of Electricity for Less Than Adequate Remuneration Program is Specific
Comment 9: Whether Commerce's Selection of Inland Freight Benchmarks for Ningbo Daye Under the Cold-Rolled Steel for Less Than Adequate Remuneration Program Is Correct
Comment 10: Whether Commerce Should Include Negative Transaction Benefit Values in the Calculation of Benefits Under the Cold-Rolled Steel for Less Than Adequate Remuneration and Policy Loans Programs
IX. Calculation of the All-Others Rate
X. Recommendation

[FR Doc. 2021–10673 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–830]

Certain Walk-Behind Lawn Mowers and Parts Thereof From the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain walk-behind lawn mowers and parts thereof (lawn mowers) from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2019, through March 31, 2020.

DATES: Applicable May 20, 2021.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2020, Commerce published its *Preliminary Determination* of sales at LTFV of lawn mowers from Vietnam.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] 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 *http://enforcement.trade.gov/frn/.*

Scope Comments

On February 16, 2021, we received timely filed scope case briefs from Ningbo Daye Garden Machinery Co., Ltd. (Ningbo Daye) [3] and MTD Products, Inc. (the petitioner).[4] On February 23, 2021, we received timely filed rebuttal scope case briefs from Briggs & Stratton, LLC (Briggs & Stratton) [5] and the petitioner.[6] For a summary of the scope briefs and rebuttal scope briefs submitted to the record for this investigation, and accompanying discussion and analysis of the scope briefs and rebuttal scope briefs timely received, *see* the Final Scope Determination Memorandum.[7] As a result of our analysis of these scope briefs and rebuttal scope briefs, we have made no changes to the scope language published in the *Preliminary Determination.*

Scope of the Investigation

The products covered by this investigation are certain walk-behind lawn mowers and parts thereof from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made certain changes to the margin calculation. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Separate Rate Companies

No party commented on our preliminary separate rate determination with respect to the mandatory respondent, Ducar Technology Co., Ltd. (Ducar).[9] Thus, there is no basis to reconsider our preliminary determination with respect to separate rate status, and we have continued to grant Ducar a separate rate in this final determination.

Vietnam-Wide Entity Rate and the Use of Adverse Facts Available (AFA)

Commerce continues to find that the use of facts available is warranted in determining the rate of the Vietnam-wide entity pursuant to sections 776(a)(1) and (a)(2)(A)–(C) of the Act. As discussed in the Issues and Decision Memorandum, Commerce finds that the use of AFA is warranted with respect to the Vietnam-wide entity because the

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[1] *See Certain Walk-Behind Lawn Mowers and Parts Thereof From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 86534 (December 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Ningbo Daye's Letter, ''Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam, Case Nos. A–570–129, C–570–130, and A–552–830: Scope Case Brief,'' dated February 16, 2021.

[4] *See* Petitioner's Letter, ''Walk-Behind Lawn Mowers and Parts Thereof from Vietnam: Letter in lieu of Scope Case Brief,'' dated February 16, 2021.

[5] *See* Briggs & Stratton's Letter, ''Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Petitioner's Rebuttal Brief on Scope Issues,'' dated February 23, 2021.

[6] *See* Petitioner's Letter, ''Walk-Behind Lawn Mowers and Parts Thereof from Vietnam: Letter in lieu of Scope Rebuttal Brief,'' dated February 23, 2021.

[7] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments Decision Memorandum for the Final Determinations,'' dated concurrently with this memorandum.

[8] *See* Commerce's Letter to Ducar, dated February 2, 2021; *see also* Ducar's Letter, ''Certain Walk-Behind Lawn Mowers from Vietnam: 'Verification' Supplemental Questionnaire—Response,'' dated February 9, 2021.

[9] *See Preliminary Determination* PDM at 13.

Vietnam-wide entity did not cooperate to the best of its ability to comply with our requests for information and, accordingly, we applied adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a). For the final determination, as AFA, we are assigning to the Vietnam-wide entity the highest transaction-specific dumping margin calculated for Ducar, 176.37 percent. Because this constitutes primary information, the statutory corroboration requirement in section 776(c) of the Act does not apply.

Combination Rates

Consistent with the *Preliminary Determination* and Policy Bulletin 05.1,[10] Commerce calculated combination (producer/exporter) rates for the single respondent eligible for a separate rate in this investigation, Ducar.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)
Ducar Technology Co., Ltd	Ducar Technology Co., Ltd	148.35
Vietnam-Wide Entity [11]		176.37

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of lawn mowers from Vietnam, as described in the appendix to this notice, which were entered, or withdrawn from warehouse, for consumption on or after December 30, 2020, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of Vietnamese exporters/producers of subject merchandise that have not received their own separate rate above, the cash deposit rate will be the cash deposit rate established for the Vietnam-wide entity; and (3) for all non-Vietnamese exporters of subject merchandise which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise from Vietnam no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: May 14, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation consists of certain rotary walk-behind lawn mowers, which are grass-cutting machines that are powered by internal combustion engines. The scope of this investigation covers certain walk-behind lawn mowers, whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to mowing.

Walk-behind lawn mowers within the scope of this investigation are only those powered by an internal combustion engine with a power rating of less than 3.7 kilowatts. These internal combustion engines are

[10] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[11] The Vietnam-wide entity includes Techtronic Cordless GP, a producer or exporter of merchandise under consideration that was issued, but did not respond to, Commerce's quantity and value questionnaire.

typically spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a maximum displacement of 196cc. Walk-behind lawn mowers covered by this scope typically must be certified and comply with the Consumer Products Safety Commission Safety Standard For Walk-Behind Power Lawn Mowers under 16 CFR part 1205. However, lawn mowers that meet the physical descriptions above, but are not certified under 16 CFR part 1205 remain subject to the scope of this proceeding.

The internal combustion engines of the lawn mowers covered by this scope typically must comply with and be certified under Environmental Protection Agency air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. However, lawn mowers that meet the physical descriptions above but that do not have engines certified under 40 CFR part 1054 or other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished and/or unassembled lawn mower means, at a minimum, a sub-assembly comprised of an engine and a cutting deck shell attached to one another. A cutting deck shell is the portion of the lawn mower—typically of aluminum or steel—that houses and protects a user from a rotating blade. Importation of the subassembly whether or not accompanied by, or attached to, additional components such as a handle, blade(s), grass catching bag, or wheel(s) constitute an unfinished lawn mower for purposes of this investigation. The inclusion in a third country of any components other than the mower subassembly does not remove the lawn mower from the scope. Lawn mowers that meet the physical description above are covered by the scope of this investigation regardless of the origin of its engine, unless such lawn mowers contain an engine that is covered by the scope of the ongoing proceedings on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from China. If the proceedings on small vertical engines from China are terminated, the lawn mowers containing small vertical engines from China will be covered by the scope of this proceeding.

The lawn mowers subject to this investigation are typically at subheading: 8433.11.0050. Lawn mowers subject to these investigations may also enter under Harmonized Tariff Schedule of the United States (HTSUS) 8407.90.1010 and 8433.90.1090. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Vietnam-Wide Rate
VII. Changes Since the *Preliminary Determination*
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Comment 1: Surrogate Value for Drive Rod
Comment 2: Surrogate Value for Rear Cover Shaft
Comment 3: Surrogate Value for Side Deflector Pole
Comment 4: Surrogate Value for Blade Adapter
Comment 5: Surrogate Value for Blade Washer
IX. Recommendation

[FR Doc. 2021–10672 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–129]

Certain Walk-Behind Lawn Mowers and Parts Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain walk-behind lawn mowers and parts thereof (lawn mowers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is October 1, 2019, through March 31, 2020.

DATES: Applicable May 20, 2021.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Marc Castillo, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0519, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2020, Commerce published its *Preliminary Determination* of sales at LTFV of lawn mowers from China.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2]

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 *http://enforcement.trade.gov/frn/.*

Scope Comments

On December 22, 2020, Commerce issued the Preliminary Scope Decision Memorandum in which it determined to modify the language of the scope by excluding from the scope of these investigations lawnmowers that contain an engine covered by the scope of the ongoing AD and CVD proceedings on small vertical engines from China to address the overlap in the scopes of these proceedings.[3] Subsequently, we received comments from interested parties regarding the Preliminary Scope Decision Memorandum; we address these comments in the Final Scope Decision Memorandum.[4] As a result of our analysis, the scope of the investigation, as contained in the Preliminary Scope Decision Memorandum, remains unchanged.

Scope of the Investigation

The products covered by this investigation are certain walk-behind lawn mowers and parts thereof from the People's Republic of China. For a complete description of the scope of this investigation, *see* Appendix I.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation.

[1] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 86529 (December 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated December 22, 2020 (Preliminary Scope Decision Memorandum), uploaded to ACCESS on February 9, 2021.

[4] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments Decision Memorandum for the Final Determinations,'' dated concurrently with this memorandum (Final Scope Decision Memorandum).

However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Separate Rate Companies

No party commented on our preliminary separate rate determinations with respect to the mandatory respondent and the non-individually examined companies, or on the methodology applied to calculate the margin for separate rate companies.[6] Thus, there is no basis to reconsider our preliminary determinations with respect to separate rate status, and we have continued to grant these parties a separate rate in this final determination.

China-Wide Entity Rate and the Use of Adverse Facts Available

Commerce continues to find that the use of facts available is warranted in determining the rate for the China-wide entity pursuant to sections 776(a)(1) and (a)(2)(A)–(C) of the Act. As discussed in the Issues and Decision Memorandum, Commerce finds that the use of adverse facts available (AFA) is warranted with respect to the China-wide entity because the China-wide entity did not cooperate to the best of its ability to comply with our requests for information and, accordingly, we applied adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a). For the final determination, as AFA, we are assigning to the China-wide entity a rate of 274.29 percent, which is a rate from the Petition.[7] We find this rate to be corroborated in accordance with section 776(c) of the Act.[8]

Combination Rates

Consistent with the *Preliminary Determination* and Policy Bulletin 05.1,[9] Commerce calculated combination (producer/exporter) rates for the respondents that are eligible for a separate rate in this investigation.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Ningbo Daye Garden Machinery Co., Ltd	Ningbo Daye Garden Machinery Co., Ltd	98.73	88.14
Chongqing Dajiang Power Equipment Co., Ltd	Chongqing Dajiang Power Equipment Co., Ltd	98.73	88.17
MTD Machinery (Suzhou) Co., Ltd	MTD Machinery (Suzhou) Co., Ltd	98.73	88.17
Qianjiang Group Wenling Jennfeng Industry Inc	Sumec Hardware & Tools Co., Ltd	98.73	88.17
Sumec Hardware & Tools Co., Ltd	Sumec Hardware & Tools Co., Ltd	98.73	88.17
Zhejiang KC Mechanical & Electrical Co., Ltd	Sumec Hardware & Tools Co., Ltd	98.73	88.17
Zhejiang Dobest Power Tools Co., Ltd	Zhejiang Amerisun Technology Co., Ltd	98.73	88.17
Zhejiang Dobest Power Tools Co., Ltd	Zhejiang Dobest Power Tools Co., Ltd	98.73	88.17
Zhejiang YAT Electrical Appliance Co., Ltd	Zhejiang YAT Electrical Appliance Co., Ltd	98.73	88.17
Zhejiang Zhongjian Technology Co., Ltd	Zhejiang Zhongjian Technology Co., Ltd	98.73	88.17
China-Wide Entity		274.29	263.75

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of lawn mowers from China, as described in the appendix to this notice, which were entered, or withdrawn from warehouse, for consumption on or after December 30, 2020, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of Chinese exporters/producers of subject merchandise that have not received their own separate rate above, the cash deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted—average dumping

[5] *See* Commerce's Letter, dated February 26, 2021; *see also* Ningbo Daye Letter, ''Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A–570–129: Response to Questions 1–4 of Questionnaire in Lieu of Verification,'' dated March 8, 2021; ''Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China, Case No. A–570–129: Response to Questionnaire in Lieu of Verification,'' dated March 8, 2021.

[6] *See Preliminary Determination* PDM at 10–15.

[7] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping Duties on Certain Walk-Behind Lawn Mowers from the People's Republic of China and the Socialist Republic of Vietnam and Countervailing Duties on Certain Walk-Behind Lawn Mowers from the People's Republic of China,'' dated May 26, 2020; and Petitioner's Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Certain Walk-Behind Lawn Mowers from the People's Republic of China: Supplemental Questionnaire Response Volume II,'' dated June 2, 2020 at Exhibit S–II–6.

[8] *See* Issues and Decision Memorandum.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rates. In this final determination, we have determined that parties have not met the criteria to qualify for a domestic pass-through adjustment.[10] However, we have continued to adjust the cash deposit rates for Ningbo Daye, all non-individually-examined companies, and the China-wide entity for export subsidies found in the companion CVD investigation by the appropriate export subsidy rates [11] as indicated in the above chart. However, suspension of liquidation of provisional measures in the companion CVD case has been discontinued effective February 27, 2021; [12] therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies at this time.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise from China no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

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). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: May 14, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation consists of certain rotary walk-behind lawn mowers, which are grass-cutting machines that are powered by internal combustion engines. The scope of this investigation covers certain walk-behind lawn mowers, whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to mowing.

Walk-behind lawn mowers within the scope of this investigation are only those powered by an internal combustion engine with a power rating of less than 3.7 kilowatts. These internal combustion engines are typically spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a maximum displacement of 196cc. Walk-behind lawn mowers covered by this scope typically must be certified and comply with the Consumer Products Safety Commission Safety Standard For Walk-Behind Power Lawn Mowers under 16 CFR part 1205. However, lawn mowers that meet the physical descriptions above, but are not certified under 16 CFR part 1205 remain subject to the scope of this proceeding.

The internal combustion engines of the lawn mowers covered by this scope typically must comply with and be certified under Environmental Protection Agency air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. However, lawn mowers that meet the physical descriptions above but that do not have engines certified under 40 CFR part 1054 or other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished and/or unassembled lawn mower means, at a minimum, a sub-assembly comprised of an engine and a cutting deck shell attached to one another. A cutting deck shell is the portion of the lawn mower—typically of aluminum or steel—that houses and protects a user from a rotating blade. Importation of the subassembly whether or not accompanied by, or attached to, additional components such as a handle, blade(s), grass catching bag, or wheel(s) constitute an unfinished lawn mower for purposes of this investigation. The inclusion in a third country of any components other than the mower subassembly does not remove the lawn mower from the scope. Lawn mowers that meet the physical description above are covered by the scope of this investigation regardless of the origin of its engine, unless such lawn mowers contain an engine that is covered by the scope of the ongoing proceedings on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from China. If the proceedings on small vertical engines from China are terminated, the lawn mowers containing small vertical engines from China will be covered by the scope of this proceeding.

The lawn mowers subject to this investigation are typically at subheading: 8433.11.0050. Lawn mowers subject to this investigation may also enter under Harmonized Tariff Schedule of the United States (HTSUS) 8407.90.1010 and 8433.90.1090. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

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III. Period of Investigation
IV. Scope Comments
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VI. China-Wide Rate
VII. Adjustment Under Section 777A(f) of the Act
VIII. Adjustments to Cash Deposit Rates for Export Subsidies
IX. Changes Since the *Preliminary Determination*
X. Discussion of the Issues
Comment 1: Financial Statements
Comment 2: Global Trade Atlas (GTA) Data from Turkey
Comment 3: Surrogate Value for Grass Catcher Bags

[10] *See* Memorandum, ''Antidumping Duty Investigation of Certain Walk-Behind Lawn Mowers from the People's Republic of China; Post-Preliminary Determination,'' dated February 11, 2021 at 3; Issues and Decision Memorandum at ''Adjustment under Section 777A(f) of the Act.''

[11] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* dated concurrently with this notice.

[12] *See* instructions issued to CBP, Message Number 1060404, dated 03/01/2021, publicly available at *https://aceservices.cbp.dhs.gov/adcvdweb/#.*

Comment 4: Movement Expense Adjustments to Import Statistics
Comment 5: Surrogate Value for Triangle Belt
Comment 6: Ministerial Errors
Comment 7: Close-Supplier Relationship
Comment 8: Due Process
Comment 9: Assignment of Fujian Spring to the China-Wide Entity
XI. Recommendation

[FR Doc. 2021–10674 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 106th Annual Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The 106th Annual Meeting of the National Conference on Weights and Measures (NCWM) will be held using a combined video conferencing platform for on-line attendance, and in-person at the Hyatt Regency Rochester in Rochester, New York, from Sunday, July 18, 2021, through Friday, July 23, 2021. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The 106th Annual Meeting will be held from Sunday, July 18, 2021, through Friday, July 23, 2021. The meeting schedule will be available on the NCWM website at *www.ncwm.com.*

ADDRESSES: This meeting will be held using a combined video conferencing (virtual) platform and in-person at the Hyatt Regency Rochester, 125 E Main St., Rochester, New York 14604.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Olson, NIST, Office of Weights and Measures (OWM), 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Olson at (301) 975–2956 or by email at *douglas.olson@nist.gov.* The meeting is open to the public, but a paid registration is required. Please see the NCWM website (*www.ncwm.com*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service and does not itself constitute an endorsement by the National Institute of Standards and Technology (NIST) of the content of the notice. NIST participates in the NCWM as an NCWM member and pursuant to 15 U.S.C. 272(b)(10) and (c)(4) and in accordance with Federal policy (*e.g.,* OMB Circular A–119 ''Federal Participation in the Development and Use of Voluntary Consensus Standards'').

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the private sector and federal regulatory agencies. These meetings can bring these government officials together with representatives of business, industry, trade associations, and consumer organizations to discuss proposed laws and regulations and other subjects related to the field of weights and measures technology, administration, and enforcement. NIST hosted the first meeting of the NCWM in 1905. Since then, the conference has provided a model of cooperation between Federal, State, and local governments and the private sector. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple Committees, Task Groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the NCWM Annual Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals.

This meeting will also have a voting session to ratify results of the 105th NCWM Annual Meeting virtual Vote. 85 FR 77170 (Dec. 1, 2020). The NCWM was unable to conduct an in-person meeting due to the COVID–19 pandemic and therefore held the 105th Annual Meeting using a video conferencing platform. Under the NCWM Bylaws and Roberts Rules of Order in effect at the time of the 105th NCWM Annual Meeting, items approved by a virtual vote are effective upon ratification at the next in-person meeting. NCWM petitioned the District Court of Lancaster County, Nebraska and received a court order allowing conducting virtual votes to ratify the results of the 105th NCWM Annual Meeting and to conduct virtual votes of all items of the 106th Annual Meeting.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the 2021 Annual Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices'' (NIST HB 44). Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality'' (NIST HB 130) and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods'' (NIST HB 133).

NCWM S&T Committee (S&T 106th Annual Meeting)

The following items are proposals to amend NIST HB 44:

Block 2 Items (B2) Define True Value for Use in Error Calculations

BLK–2: (SCL–20.3, SCL–20.4, SCL–20.5, SCL–20.6, SCL–20.7, and SCL–20.8)

The S&T Committee will further consider a proposal that has been designated as an ''Assigned'' item, meaning that further development will be done by a Task Group formed by the NCWM. The Task Group assigned to this item has submitted a ''Final Report'' to the Committee; however, the Task Group noted also that the report may benefit from further vetting. This ''block'' proposal includes six individual items related to the application of requirements based on that application to either ''e'' (the verification scale division) or ''d'' (the minimum scale division). Adoption of this proposal will have a significant effect on the regulation of scales, particularly where the values of ''e'' and ''d'' are not equal.

SCL—Scales

SCL–17.1 S.1.8.5. Recorded Representations, Point of Sale (POS) Systems

S.1.8.5. Recorded Representations, POS Systems, Appendix D—Definitions: Tare

Following a vote to not adopt this proposal during the 2020 NCWM Annual Meeting, this item was returned to the S&T Committee. This proposal would require additional sales information to be recorded by cash registers interfaced with a weighing element for items that are weighed at a checkout stand (*i.e.,* a POS system). These systems are currently required to record the net weight, unit price, total price, and the product class, or in a system equipped with price look-up capability, the product name or code number. The change proposed would add ''tare weight'' to the sales information currently required. There was a presumption by the S&T Committee following the vote in January 2021, that last minute amendments to the proposal possibly resulted in the failure to be adopted.

Changes in this proposal are presented as a nonretroactive requirement with an enforcement date of January 1, 2022. Adoption of this proposal would require additional information (*i.e.,* the tare weight) to appear on the sales receipt for items weighed at a checkout stand (POS Systems) on equipment installed into commercial service as of January 1, 2022. This proposed change would not affect equipment already in service.

SCL–20.12 Multiple Sections To Add Vehicle Weigh-in-Motion (WIM) to the Code and Appendix D

During the 2020 NCWM Annual Meeting, the Committee supported the proposal as being fully developed; however, the most recent version of the proposal may not have been given sufficient time to be vetted among the weights and measures community. The proposal was, however, given a voting status at the 2021 NCWM Interim Meeting. The S&T Committee will consider this proposal that would amend multiple sections in NIST HB 44 Scales Code so that it could be applied to WIM vehicle scales. This proposal is similar to another item that was withdrawn during the 2021 NCWM Interim Meeting (former item SCL–16.1). However, this proposal would only permit commercial weights from WIM equipment when the vehicles are weighed as a single draft and would not allow the summing of axle weights or axle group weights to determine a gross vehicle weight. The submitter of this proposal had provided an opportunity in March 2020 for several state regulatory officials, NCWM, and NIST OWM to witness testing performed on a single-draft vehicle scale. That demonstration provided results that this type of system is capable of producing weight values that comply with current NIST HB 44 Class III L tolerances.

Block 4 Items (B4) Electronically Captured Tickets or Receipts

The S&T Committee will consider a proposal to permit electronic captured tickets and receipts in NIST HB 44 Sections 1.10. General, 3.30. LMD, 3.31. VTM, 3.32. LPG, 3.34. CLM, 3.37. MFM, 3.38. CDL, 3.39. HGM, and 3.35. milk meters codes, and Appendix D Definitions to add electronic to the definition of recorded representation. The proposed language removes the term printed and replaces it with recorded representation so that there is an option to receive a printed ticket/receipt or an electronic ticket/receipt. The language was changed during the Interim Meeting based on comments expressing the need for printed tickets and now the proposal references NIST HB 44 G–S.5.6. in various specific codes. At the 2021 Interim Meeting, the S&T Committee designated this as a developing item for further comment and consideration.

OTH–21.1 Appendix A—2.1. Acceptance and Maintenance Tolerances

The S&T Committee will consider a proposal recommended to clarify if acceptance tolerances are to be applied to devices that have undergone routine accuracy adjustment not initiated by an official rejection. The submitter of this proposal submitted a different proposal in 2019 that was withdrawn by the Committee. However, the submitter has submitted a new item to fulfill that same purpose.

This item would amend NIST HB 44 Appendix A (Fundamental Considerations), section 2.1. to delete the verbiage ''or adjusted'' in the second paragraph of that section. The proposal would also add language in the same sentence stating, ''. . . equipment returned to service following official rejection, or equipment undergoing NTEP evaluation,'' to clarify when it is appropriate to apply acceptance tolerances.

The Committee accepted additional wording to the proposed language at the 2021 Interim Meeting and gave this item a Voting status for the 2021 Annual Meeting.

Block 5 Items (B5) Category 3 Methods of Sealing Blk-5: (LMD–20.1 W, LMD–21.1 D)

The S&T Committee will consider a proposal to permit the use of an electronic log in lieu of a printed copy of a Category 3 sealing method on liquid measuring devices. The current ''Category 3'' sealing requirements in NIST HB 44 Liquid-Measuring Devices Code (Section 3.30.) specify that a printed copy of an event logger must be available on demand through the device or through another on-site device and that the information may also be available electronically. The new proposal would amend the language in Table S.2.2. ''Categories of Device and Methods of Sealing'' of the Liquid-Measuring Devices Code (Section 3.30.) to permit either a printed or electronic form of the event logger to be made available. At the 2021 Interim Meeting, the Committee agreed to withdraw item LMD–20.1 from the block that was a similar proposal and designated this item as a developing item so that the submitters of both items could work together to further develop item LMD–21.1. EVF–21.4

S.3.3. Provision for Sealing

The S&T Committee will consider a proposal that will permit those systems that feature either a Category 2 or Category 3 method of sealing metrological features to provide that information in an electronic format during an inspection by weights and measures officials, in lieu of an electric vehicle fueling system providing a printed copy of its audit trail event records. At the 2021 Interim Meeting, the S&T Committee agreed to a voting status for this item at the 2021 Annual Meeting.

EVF–21.6 Definitions: Minimum Measured Quantity (MMQ)

The S&T Committee will consider a proposal to include a definition in NIST HB 44 Section 3.40. Electric Vehicle Fueling Systems—Tentative code to address the special meaning of MMQ for these systems in that it is the smallest unit declared by the manufacturer that is suitable for delivery and that will be in compliance. At the 2021 Interim Meeting, the S&T Committee designated these as Voting Items at the 2021 Annual Meeting.

NCWM L&R Committee

Issues on the 106th Annual agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST HB 130.

The following items are proposals for modifying NIST HB 130 Uniform

Method of Sale (MOS) and the Uniform Fuels and Automotive Lubricants Regulation (FLR):

Item Block (B1)—NIST HB 130, PAL–19.1. UPLR, Sec. 2.8. Multiunit Package. NET–19.2. NIST HB 133

Modify ''scope'' for Chapters 2 through 4, add a note following Sections 2.3.7.1. and 2.7.3., NET–19.3. and create a Chapter 5. Specialized Test Procedures in NIST HB 133. The L&R Committee will also be addressing a proposal to include adoption of a test procedure for the total quantity declaration on multiunit or variety packages. In addition, in NIST HB 130, Uniform Packaging and Labeling Regulation, the proposal would clarify Section 2.8. Multiunit.

Item MOS–20.5 Section 2.21 Liquefied Petroleum Gas

The L&R Committee will consider a proposal to modify the existing language for the method of sale of Liquefied Petroleum Gas. The language was changed during the NCWM Interim Meeting and is a Voting Item. Recommended changes to the existing language reference a value of ''15.6 °C'' for temperature determinations in metric units. According to the current industry practice for sales of petroleum products, the reference temperature for sales in metric are based on 15 °C rather than the exact conversion from 60 °F (which is 15.6 °C). Thus, the temperature reference in metric should be 15 °C.

Item—FLR–20.5 Section 2.1.2.(a) Gasoline-Ethanol Blends

The L&R Committee will consider a proposal to modify the existing NIST HB130 FLR, Sec. 2.1.2.(a) Gasoline-Ethanol Blends to include a statement to clarify the maximum vapor pressure limits by more than 1.0 psi for blends ''containing at least 9 and not more than 15 vol % ethanol'' from June 1 through September 15 as allowed by EPA 40 CFR 80.27(d).

The Fuels and Lubricants Subcommittee will consider modifications to modify Item Block 3—MOS 21.1. and FLR–21.2 Labeling and Identification of Transmission Fluid, a proposal to modify the language to include a cautionary statement of package labels of obsolete transmission fluids.

Authority: 15 U.S.C. 272(b).

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2021–10677 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB093]

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permits; Correction

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

ACTION: Notice; correction.

SUMMARY: NMFS is correcting a notice that appeared in the **Federal Register** on May 6, 2021, that issues permits for a period of 3 years to authorize the incidental, but not intentional, take of specific Endangered Species Act (ESA)-listed marine mammal species or stocks under section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA), in certain U.S. commercial fisheries. There is an error in the description of the Category III fisheries that do not require section 101(a)(5)(E) authorization.

DATES: This notice is applicable May 20, 2021.

FOR FURTHER INFORMATION CONTACT: Suzie Teerlink, NMFS Alaska Region, (907) 586–7240, *Suzie.Teerlink@noaa.gov;* Diana Kramer, NMFS Pacific Islands Region, (808) 725–5167, *Diana.Kramer@noaa.gov;* Kara Shervanick, NMFS Southeast Region, (727) 824–5350, *Kara.Shervanick@noaa.gov;* or Caroline Good, NMFS Office of Protected Resources, (301) 427–8402, *Caroline.Good@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published a notice on May 6, 2021 (86 FR 24384) issuing permits to five fisheries to authorize the incidental take of ESA-listed marine mammal species or stocks under section 101(a)(5)(E) of the MMPA. The permits are effective for a 3-year period beginning May 6, 2021.

The notice incorrectly stated: ''The HI shallow-set longline/Western Pacific pelagic longline (HI shallow-set component) changed classification from Category II to Category III in the 2021 LOF (86 FR 3028, January 14, 2021).'' (86 FR 24384, 24386).

The Category II HI shallow-set longline fishery and the HI shallow-set component of the Western Pacific pelagic longline fisheries were not reclassified as Category III fisheries on the 2021 LOF (see 86 FR 3028, January 14, 2021). These two fisheries remain Category II fisheries on the LOF. As we stated in our **Federal Register** notice of the issuance of MMPA section 101(a)(5)(E) permits, we had previously determined that these fisheries meet the definition of a Category III with respect to ESA-listed stocks or species because they have a remote likelihood of or no known incidental mortality of serious injury of ESA-listed marine mammals, and therefore did not require permits. (86 FR 24384, 24386)

However, the Category II AK Bering Sea, Aleutian Islands Pacific cod longline fishery was reclassified as a Category III fishery on the 2021 LOF (86 FR 3028, January 14, 2021). As we stated in our **Federal Register** notice for issuance of the permits, we previously determined this fishery was considered a Category III commercial fishery with respect to ESA-listed stocks or species, so this change in classification does not change our determination.

NMFS is publishing this notice to correct these errors and state that the AK Bering Sea, Aleutian Islands Pacific cod longline fishery changed classification from Category II to Category III on the 2021 List of Fisheries (LOF) while the Category II HI shallow-set longline fishery and the HI shallow-set component of the Western Pacific pelagic longline fishery did not change classification (86 FR 3028, January 14, 2021). These fisheries were already considered Category III commercial fisheries with respect to ESA-listed stocks or species, so these corrections do not change our proposed determinations.

Dated: May 17, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–10631 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB095]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Marine Corps Training Exercises at Cherry Point Range Complex, North Carolina

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

ACTION: Notice; issuance of Renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given

that NMFS has issued a Renewal incidental harassment authorization (IHA) to the U.S. Marine Corps (USMC) to incidentally harass marine mammals incidental to training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina.

DATES: This Renewal IHA is valid from May 18, 2021, through May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

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: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-marine-corps-training-activities-cherry-point-range-complex.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization 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 such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

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 authorization, 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 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 the Specified Activities and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts 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 the proposed IHA for the initial IHA, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

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: *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.

History of Request

On September 28, 2019, NMFS received a request from the USMC for an IHA to take marine mammals incidental to training exercises conducted at MCAS Cherry Point Range Complex in North Carolina. Following NMFS' review of the request, USMC submitted a revised application that was deemed adequate and complete on January 22, 2020. The USMC's request is for authorization of take of bottlenose dolphin (*Tursiops truncatus*) by Level A and Level B harassment. We published a notice of a proposed IHA and request for comments on March 16, 2020 (85 FR 14886) and subsequently published the final notice of our issuance of the IHA on May 26, 2020 (85 FR 31462), effective from May 18, 2020, through May 17, 2021. On August 3, 2020, NMFS received a request from USMC requesting a 7-year Letter of Authorization for take of bottlenose dolphin incidental to the same training operations at the MCAS Cherry Point Range Complex. NMFS determined that request to be adequate and complete on September 10, 2020, and published a notice of receipt of the request on October 6, 2020. As NMFS is unable to

reach a decision regarding the requested Letter of Authorization prior to expiration of the current IHA, USMC requested a Renewal IHA.

On March 16, 2021, NMFS received an application for the Renewal of the initial IHA. As described in the request for the Renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial authorization. In order to consider an IHA Renewal, NMFS requires the applicant to provide 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. NMFS has reviewed USMC's preliminary monitoring report (available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-marine-corps-training-activities-cherry-point-range-complex*) and has determined that USMC's activities (including mitigation, monitoring, and reporting), estimated incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the initial IHA. This IHA Renewal is valid for a period of 1 year, from May 18, 2021, through May 17, 2022.

Description of the Specified Activities and Anticipated Impacts

USMC plans to continue conducting training operations at the MCAS Cherry Point Range Complex. The training operations involve the use of live (explosive) and inert (non-explosive) ordnance and small boat maneuvers. These activities occur at the in-water bombing targets Brant Island (BT–9) and Rattan Bay (BT–11) located in Pamlico Sound, North Carolina.

The anticipated impacts are identical to those described in the initial IHA. NMFS anticipates the take of the same species of marine mammal (bottlenose dolphin) by Level A and Level B harassment incidental to underwater noise resulting from explosive detonations associated with the training activities.

The following documents are referenced in this notice and include important supporting information:

- Initial final IHA (85 FR 31462; May 26, 2020);
- Initial proposed IHA (85 FR 14886; March 16, 2020); and
- 2020 IHA application, references cited, and previous public comments received (available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*).

A detailed description of the training activities for which authorization of take was requested may be found in the **Federal Register** notice of proposed IHA for the 2020 authorization (85 FR 14886; March 16, 2020). The location, timing (*e.g.,* seasonality), and nature of the training activities, including the types and amounts of munitions planned for use under this Renewal IHA, are identical to those analyzed in the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take was requested, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice for the proposed IHA for the initial authorization (85 FR 14886; March 16, 2020). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, as well as USMC's preliminary monitoring report. NMFS has determined that there is no new information affecting 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.

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 take was requested may be found in the **Federal Register** notice for the proposed initial IHA (85 FR 14886; March 16, 2020). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, as well as USMC's preliminary monitoring report, and determined that that there is no new information affecting our 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 **Federal Register** notice for the proposed and final initial IHAs (85 FR 14886; March 16, 2020 and 85 FR 31462; May 26, 2020). The information informing the take estimates remains applicable to this authorization, and is unchanged from the previously issued IHA. The stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 1. As before, no serious injury or mortality is anticipated to result from USMC's training activity. We assume for purposes of analysis here that all takes could accrue to any of the three potentially affected stocks of bottlenose dolphin (the only species for which take is expected).

TABLE 1—ESTIMATED TAKE AUTHORIZED

Species	Level B harassment	Level A harassment
Bottlenose dolphin	102	2

Description of Mitigation, Monitoring and Reporting Measures

The required 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 (85 FR 31462; May 26, 2020), and the discussion of the least practicable adverse impact included in that document remains accurate. All mitigation, monitoring and reporting measures in the initial IHA are carried over to this Renewal IHA and summarized here:

Mitigation Requirements

Visual Monitoring—Range operators conduct or direct visual surveys to monitor the target areas for protected species before and after each exercise. Range operation and control personnel monitor the target area through two tower-mounted safety and surveillance cameras. In addition, when small boats are part of planned exercises and already on range, visual checks by boat crew will be performed.

The remotely operated range cameras (surveillance cameras) are high-resolution cameras that allow viewers to see animals at the surface and breaking the surface (though not underwater). The camera system has night vision (infrared) capabilities. Lenses on the camera system have a focal length of 40 mm to 2200 mm (56x), with view angles of 18 degrees 10′ and 13 degrees 41′ respectively. The field of view when zoomed in on the Rattan Bay targets will be 23 ft wide by 17 ft high, and on the mouth of Rattan Bay itself 87 ft wide by 66 ft high. Observers using the cameras are able to clearly identify ducks floating on waters near the target.

In the event that a marine mammal is sighted within 914 m (3,000 ft) of the BT–9 target area, personnel will declare

the area as fouled and cease training exercises. Personnel will commence operations in BT–9 only after the animal has moved 914 m (3,000 ft) away from the target area.

For BT–11, in the event that a marine mammal is sighted anywhere within the confines of Rattan Bay, personnel will declare the water-based targets within Rattan Bay as fouled and cease training exercises. Personnel will commence operations in BT–11 only after the animal has moved out of Rattan Bay.

Range Sweeps—MCAS Cherry Point contracts range sweeps with commercial support aircraft prior to the commencement of range operations. The pilot and aircrew are trained in spotting objects in the water. The primary goal of the pre-exercise sweep is to ensure that the target area is clear of unauthorized vessels or persons and protected species. Range sweeps will not occur on weekend mornings.

The sweeps are flown at 100 to 300 ft (30–90 m) above the water surface, at airspeeds between 60 to 100 knots (69 to 115 miles per hour (mph)). The crew communicates directly with range personnel and can provide immediate notification to range operators of a fouled target area due to the presence of protected species.

Aircraft Cold Pass—Standard operating procedures for waterborne targets require the pilot to perform a visual check prior to ordnance delivery to ensure the target area is clear of unauthorized civilian boats and personnel, and protected species. This is referred to as a ''cold'' or clearing pass. Pilots requesting entry onto the BT–9 and BT–11 airspace must perform a low-altitude, cold first pass (a pass without any release of ordnance) immediately prior to ordnance delivery at the bombing targets both day and night.

Pilots will conduct the cold pass with the aircraft (helicopter or fixed-winged) flying straight and level at altitudes of 61 to 914 m (200 to 3,000 ft) over the target area. The viewing angle is approximately 15 degrees. A blind spot exists to the immediate rear of the aircraft. Based upon prevailing visibility, a pilot can see more than one mile forward upon approach. If marine mammals are not present in the target area, the Range Controller may grant ordnance delivery as conditions warrant.

Delay of Exercises—The USMC will consider an active range as fouled and not available for use if a marine mammal is present within 914 m (3,000 ft) of the target area at BT–9 or anywhere within Rattan Bay (BT–11). Therefore, if USMC personnel observe a marine mammal within 914 m (3,000 ft) of the target at BT–9 or anywhere within Rattan Bay at BT–11 during the cold pass or from range camera detection, they will delay training until the marine mammal moves beyond and on a path away from 914 m (3,000 ft) from the BT–9 target or moved out of Rattan Bay at BT–11. This mitigation applies to air-to-surface and surface-to-surface exercises day or night.

Approximately 15 percent of training activities take place during nighttime hours. During these training events, monitoring procedures mirror day time operations as range operators first visually search the target area with the high-resolution camera. Pilots will then conduct a low-altitude first cold pass and utilize night vision capabilities to visually check the target area for any surfacing mammals.

Vessel Operation—All vessels used during training operations will abide by NMFS' Southeast Regional Viewing Guidelines designed to prevent harassment to marine mammals.

Stranding Network Coordination—The USMC will coordinate with the local NMFS Stranding Coordinator to discuss any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training.

Monitoring Requirements

Protected Species Observer Training—Operators of small boats, and other personnel monitoring for marine mammals from watercraft shall be required to take the U.S. Navy's Marine Species Awareness Training. Pilots conducting range sweeps shall be instructed on marine mammal observation techniques during routine Range Management Department briefings. This training would make personnel knowledgeable of marine mammals, protected species, and visual cues related to the presence of marine mammals and protected species.

Pre- and Post-Exercise Monitoring—The USMC will conduct pre-exercise monitoring the morning of an exercise and post-exercise monitoring the morning following an exercise, unless an exercise occurs on a Friday, in which case the post-exercise sweep would take place the following Monday. If the crew sights marine mammals during a range sweep, they would collect sighting data and immediately provide the information to range personnel who would take appropriate management action. Range staff would relay the sighting information to training Commanders scheduled on the range after the observation. Range personnel will enter the data into the USMC sighting database. Sighting data includes the following (collected to the best of the observer's ability): (1) Location (either an approximate location or latitude and longitude); (2) the platform that sighted the animal; (3) date and time and whether the sighting was during day or night; (4) how the animal was detected (*e.g.,* range cameras, acoustic monitoring, vessel, aircraft); (5) species; (6) number of animals; (7) the animals' direction of travel and/or behavior; and (8) weather.

Reporting Requirements

The USMC will submit a report to NMFS no later than 90 days following expiration of this IHA. This report must summarize the type and amount of training exercises conducted, all marine mammal observations made during monitoring, and if mitigation measures were implemented. The report will also address the effectiveness of the monitoring plan in detecting marine mammals.

Public Comments

A notice of NMFS' proposal to issue a Renewal IHA to USMC was published in the **Federal Register** on April 22, 2021 (86 FR 21284). That notice either described, or referenced descriptions of, the applicant's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring, and reporting measures. NMFS did not receive any comments.

Determinations

The activities planned by USMC are identical to those analyzed in the initial IHA, as are the method of taking and the effects of the action. The potential effects of USMC's activities are limited to Level A and Level B harassment in the form of auditory injury, temporary threshold shift, and behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that USMC's activities would have a negligible impact on the affected species or stocks. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has 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 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) USMC'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; (4) 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. No incidental take of ESA-listed marine mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

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, we must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. In 2015, NMFS developed an Environmental Assessment (EA) evaluating the impacts of authorizing take of marine mammals incidental to the USMC's training activities at MCAS Cherry Point. Following review of this analysis, NMFS determined that the activity would not have a significant effect on the quality of the human environment and issued a Finding of No Significant Impact (FONSI).

NMFS has determined that there are no substantive changes to the evaluated action or new environmental impacts; and, therefore, the previous NEPA analysis remains valid. The 2015 EA and FONSI are posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Renewal

NMFS has issued a Renewal IHA to USMC for the take of marine mammals incidental to training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina, for a period of 1 year.

Dated: May 14, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–10683 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB101]

North Pacific Albacore United States Stakeholder Meeting; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a U.S. stakeholder meeting to discuss North Pacific albacore (NPALB) management. This meeting is intended as a follow-up to a meeting held by the International Scientific Committee on Tuna and Tuna-like Species in the North Pacific Ocean regarding a management strategy evaluation for NPALB. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The virtual meeting will be held on June 1, 2021, from 12 p.m. to 2 p.m. PDT (or until business is concluded). You must notify NMFS by May 24, 2021, if you plan to attend the meeting (see **ADDRESSES**).

ADDRESSES: If you plan to attend the meeting, which will be held by webinar, please notify Valerie Post, Pacific Islands Regional Office, NMFS, by email at *valerie.post@noaa.com.* Instructions for attending the meeting will be emailed to meeting participants before the meeting occurs.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, West Coast Region, at *celia.barroso@noaa.gov* or 562–432–1850.

SUPPLEMENTARY INFORMATION: The International Scientific Committee on Tuna and Tuna-like Species in the North Pacific Ocean (ISC) recently completed a management strategy evaluation (MSE) on North Pacific albacore (NPALB),[1] and the ISC Albacore Working Group hosted a meeting among U.S. and Canadian stakeholders from March 22–25, 2021, to review the results of the MSE. As a follow-up to the ISC meeting in March 2021, this U.S. stakeholder meeting is an opportunity for U.S. stakeholders to express their priorities and consider future management of NPALB.

NPALB U.S. Stakeholder Meeting Topics

This meeting will have an agenda that will be distributed to participants in advance of the meeting. The meeting agenda will include, but is not limited to, the following topics:

(1) Results of the ISC NPALB MSE.

(2) Management objectives.

(3) Discussion of potential future harvest strategy for NPALB.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Valerie Post (see **ADDRESSES**) by May 24, 2021.

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* and 16 U.S.C. 6901 *et seq.*

Dated: May 17, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–10646 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB056]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of Massachusetts

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

ACTION: Notice; modified proposal of an incidental harassment authorization; request for comments on modified proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Mayflower Wind Energy LLC (Mayflower) for authorization to take marine mammals incidental to site characterization surveys off the coast of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0521) and along potential submarine cable routes to landfall locations at Falmouth, Massachusetts and near

[1] *http://isc.fra.go.jp/working_groups/albacore.html.*

Narragansett Bay. NMFS published a proposed incidental harassment authorization (IHA) in the **Federal Register** on March 1, 2021, Mayflower determined that they needed to add an additional export cable route corridor to the proposed IHA. Therefore, a final IHA was not issued and Mayflower submitted a modified application on April 19, 2021. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its modified proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-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.

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.Pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

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 incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which NMFS has not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

NMFS will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On October 23, 2020, NMFS received a request from Mayflower for an IHA to take marine mammals incidental to site characterization surveys in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0521; Lease Area) and a submarine export cable route connecting the Lease Area to a landfall location in Falmouth, Massachusetts. A revised application was received on December 15, 2020. NMFS deemed that request to be adequate and complete on February 1, 2021. Mayflower's request was for take of a small number of 14 species of marine mammals by Level B harassment only. Neither Mayflower nor NMFS expected serious injury or mortality to result from this activity and, therefore, an IHA was appropriate. NMFS published a notice of proposed IHA in the **Federal Register** on March 1, 2021 (86 FR 11930).

Mayflower submitted a modified application on April 19, 2021 after the initial proposed IHA had published in the **Federal Register**. A final IHA was not issued for the initial proposed IHA. The modified application included an additional export cable route. Mayflower originally had proposed two separate but parallel export cable routes that would run north from the Lease Area between Martha's Vineyard and Nantucket islands through Nantucket Sound to a landfall location in Falmouth, MA. As part of the modification, Mayflower proposes to eliminate the easternmost export cable corridor route between Martha's Vineyard and Nantucket and replace it with an export cable corridor route that runs south of Martha's Vineyard through Narragansett Bay to an unspecified landfall location in the Bay. The westernmost export cable route corridor to Falmouth, MA would remain unchanged from the initial proposed IHA.

NMFS previously issued an IHA to Mayflower for similar work (85 FR 45578; July 29, 2020) in the same Lease Area and along the same submarine cable route that runs between Martha's Vineyard and Nantucket to a landfall location in Falmouth, MA that is currently effective from July 23, 2020 through July 22, 2021.

Description of Proposed Activity

Overview

Mayflower proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) and geotechnical surveys, in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf #OCS–A 0521 (Lease Area) and along potential submarine cable routes to landfall locations at Falmouth, Massachusetts and in Narragansett Bay as shown in Figure 1.

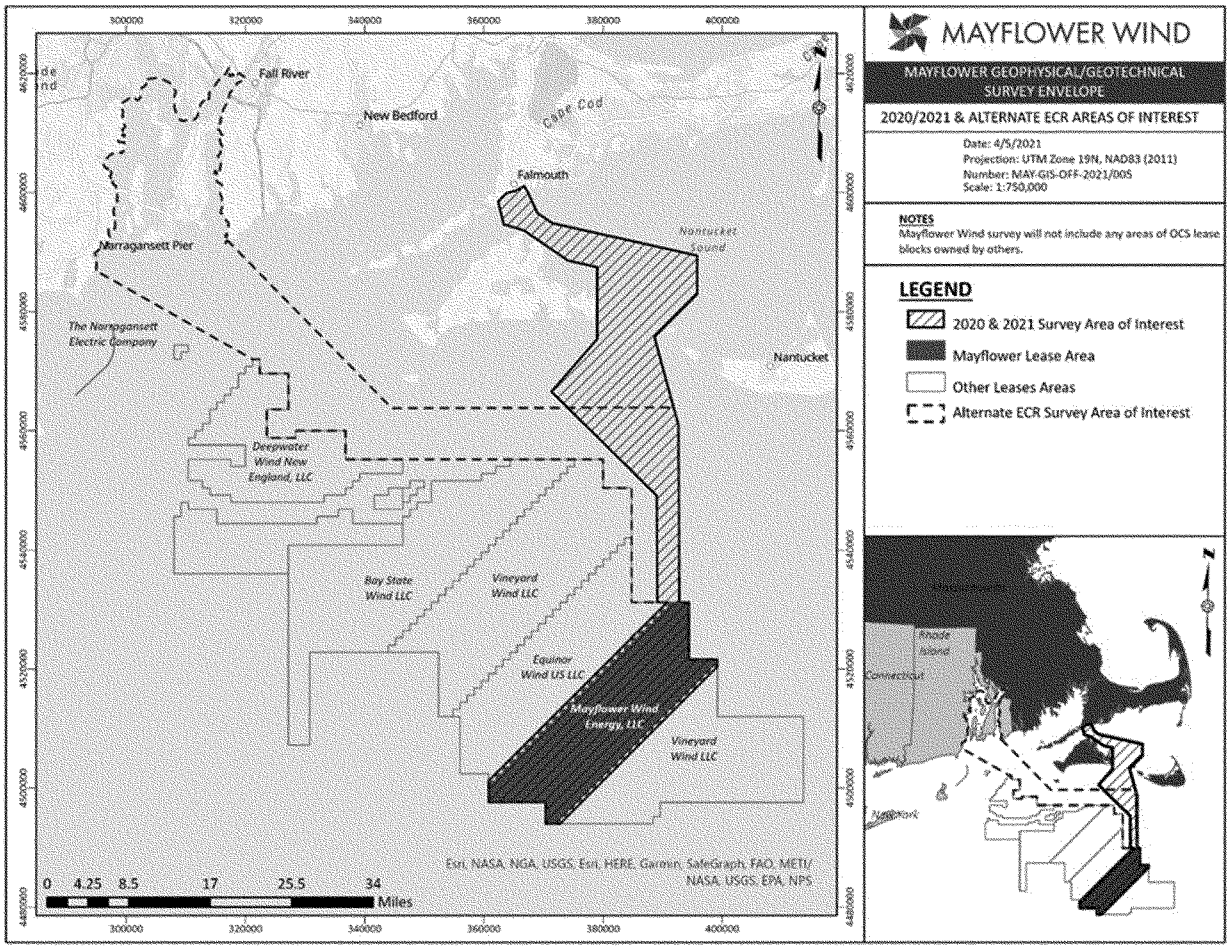

Figure 1 – Survey Area and Modified Export Route Cable Corridors

The objective of the activities is to acquire high resolution geophysical (HRG) and geotechnical data on the bathymetry, seafloor morphology, subsurface geology, environmental/ biological sites, seafloor obstructions, soil conditions, and locations of any man-made, historical or archaeological resources within Lease Area OCS–A 0521 and along the proposed export cable route corridors.

HRG surveys would be carried out by up to four (4) different vessels. This is the same number of vessels that was proposed in the initial application and notice of proposed IHA (86 FR 11930; March 1, 2021).

Underwater sound resulting from Mayflower's proposed activities, specifically its proposed HRG surveys, have the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The total duration of the modified proposed HRG survey activities would be approximately 471 survey days and the total trackline distance would be 14,350 kilometers (km) as shown in Table 1. These values are identical to those presented in the initial proposed IHA (86 FR 11930; March 1, 2021).

Mayflower deducted the trackline distance from the eastern cable route that was originally running to Falmouth as well as selected trackline distances originally planned for the Lease Area, and added these same trackline distances to the new proposed Narragansett Bay cable route corridor. Mayflower proposes to begin survey activities in June 2021 and conclude operations by December 31, 2021. However, the modified proposed IHA would be effective for 1 year from the date of issuance. In the initial proposed IHA, Mayflower had proposed effective dates of April 1, 2021 through November 30, 2021.

Specific Geographic Region

Mayflower's survey activities would occur in the Northwest Atlantic Ocean in Lease Area OCS–A 0521 which is located approximately 20 nautical miles (38 km) south-southwest of Nantucket, Massachusetts and covers approximately 515 km^2. All survey efforts would occur within U.S. Federal and state waters. Water depths in the Lease Area are approximately 38–62 meters (m). For the purpose of this IHA,

the Lease Area and export cable routes are collectively referred to as the Project Area.

Detailed Description of Specific Activity

Mayflower's modified proposed marine site characterization surveys include the use of HRG survey equipment. Survey activities would occur within the Lease Area and along export cable routes between the Lease Area and Falmouth, MA and Narragansett Bay. Up to four (HRG survey vessels may operate concurrently as part of the proposed. One vessel would be operating primarily in the Lease Area and deep-water sections of the cable route (24 hour operations), with a second vessel operating primarily in the shallow water portion of the cable routes and sometimes into the deep water portion of the cable routes. Up to two shallow-draft vessels would work in very shallow waters (daylight only operations). Very shallow waters are defined as areas where only shallow draft vessels (<5 m) are capable of operating. Up to four additional vessels may be used to conduct geotechnical sampling activities (vibracores, seabed core penetration tests (CPTs), and boreholes) during the same period as the geophysical surveys but these activities are not expected to result in the harassment of marine mammals and will not be discussed further in this analysis. The proposed HRG survey activities are described below.

HRG Survey Activities

For assessing potential impacts to marine mammals, the survey has been divided into two areas. The Deep-water Survey Area shows the Lease Area where wind turbine generators (WTGs) and inter-array cables will be installed as well as the deep-water section of the export cable routes. The proposed survey in this area will primarily consist of 24-hour vessel operations, with some 12-hour per day vessel operations possible in the Shallow-water Survey Area which includes the rest of the export cable routes in shallow waters and very shallow nearshore waters. In the very shallow water areas, one or two shallow-draft (<5 m) vessels will conduct nearshore surveys operating only during daylight hours.

The linear distance (survey tracklines) and number of active sound source days, including the new proposed Narragansett Bay cable route corridor, for the anticipated survey activity are summarized in Table 1 and remain unchanged from those presented in the initial notice of proposed IHA (86 FR 11930; March 1, 2021). The number of active sound source days was calculated by dividing the total survey trackline lengths in each area by the approximate survey distance per day anticipated to be achieved in each of the three zones shown in Table 1. The range of estimates provided for the shallow-water area result from assuming either daylight only (12-hours per day) survey operations or 24-hour per day operations.

TABLE 1—ACTIVITY DETAILS FOR 2021 MAYFLOWER HRG SURVEYS FROM JUNE THROUGH DECEMBER 31, 2021

Location	Approximate survey trackline [1] (km)	Approximate survey distance per day (km)	Active sound source days
Lease Area and deep-water section of the cable route	7,000	80	88
Shallow-water section of the cable route	3,250	30–60	55–109
Very shallow cable route	4,100	15	274
Total	14,350	.....	417–471

Some of the sources used during the planned surveys produce sounds that are audible to marine mammals and, therefore, may be detected by marine mammals (MacGillivray *et al.* 2014). Multiple factors related to source signal characteristics (*e.g.,* beamwidth) determine the likelihood of detection and, given detection, the likelihood that receipt of the signal would elicit a response to the degree that Level B harassment occurs. A geophysical survey contractor(s) has not yet been selected to conduct this work, so the exact equipment to be used is currently unknown. However, potential contractors provided representative sound-generating equipment that may be used during the survey activities. The survey activities and equipment proposed for use in the modified proposed IHA are identical to those presented in the initial notice of proposed IHA (86 FR 11930; March 1, 2021). Acoustic source types that could result in take of marine mammals include the following:

- Shallow penetration, non-impulsive, non-parametric sub-bottom profilers (SBPs, also known as CHIRPs) are used to map the near-surface stratigraphy (top 0 to 10 m) of sediment below seabed. A CHIRP system emits signals covering a frequency sweep from approximately 0.01 to 1.9 kilohertz (kHz) over time. The frequency range can be adjusted to meet project variables.
- Medium penetration, impulsive sources (boomers, sparkers) are used to map deeper subsurface stratigraphy as needed. A boomer is a broad-band sound source operating in the 3.5 hertz (Hz) to 10 kHz frequency range. Sparkers are used to map deeper subsurface stratigraphy as needed. Sparkers create acoustic pulses from 50 Hz to 4 kHz omni-directionally from the source.

Operation of Non-impulsive, parametric SBPs; Ultra-short baseline (USBL) positioning systems; Multibeam echosounders (MBESs); and Side scan sonars (SSS) are not reasonably expected to result in take of marine mammals for reasons described in the initial notice of proposed IHA (86 FR 11930; March 1, 2021) and will not be carried forward in this analysis.

Table 2 identifies the representative survey equipment that may be used in support of planned HRG survey activities that operate below 180 kilohertz (kHz) (*i.e.,* at frequencies that are audible to and therefore may be detected by marine mammals) and have the potential to cause acoustic harassment to marine mammals. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives. Source levels for all equipment listed in Table 2 came from Crocker and Fratantonio (2016).

TABLE 2—SUMMARY OF HRG SURVEY EQUIPMENT PROPOSED FOR USE THAT COULD RESULT IN TAKE OF MARINE MAMMALS

Specific HRG equipment	Operating frequency range (kHz)	Source level (dB rms)	Beamwidth (degrees)	Typical pulse duration (ms)	Pulse repetition rate (Hz)
Sparker					
Geomarine Geo-Spark 400 tip 800 J system	0.01–1.9	203	180	3.4	2
Applied Acoustics Dura-Spark UHD 400 tips, up to 800 J	0.01–1.9	203	180	3.4	2
Boomer					
Applied Acoustics S-Boom Triple Plate	0.01–5	205	61	0.6	3
Applied Acoustics S-Boom	0.01–5	195	98	0.9	3
Sub-Bottom Profiler					
Edgetech 3100 with SB–2–16S towfish	2–16	179	51	9.1	10
Edgetech DW–106	1–6	176	66	14.4	10
Teledyne Benthos Chirp III—towfish	2–7	199	82	5.8	10
Knudson Pinger SBP	15	180	71	4	2

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

A description of the marine mammals in the area of the activities is found in the initial notice of proposed IHA (86 FR 11930; March 1, 2021) and remains applicable to this modified proposed IHA.

TABLE 3—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY MAYFLOWER'S PROPOSED ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [4]	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	E/D; Y	368 [3] (0,408; 2018)	0.89	18.6
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,393 (0; 1,375; 2016)	22	58
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D; Y	6,820 (0.24; 5,573; 2016)	12	2.35
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6292 (1.02; 3,098; 2016)	6.2	1.2
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	NA	E; Y	4,349 (0.28; 3,451; See SAR)	3.9	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-; N	39,215 (0.3; 30,627; See SAR)	306	21
Bottlenose dolphin	*Tursiops spp.*	Western North Atlantic Offshore.	-/-; N	62,851 (0.213; 51,914; See SAR)	519	28
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,897 (0.21; 145,216; 2016)	1,452	399
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	-/-; N	92,233 (0.71; 54,433; See SAR)	544	26
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,493 (0.19; 30,289; See SAR)	303	54.3
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy.	-/-; N	95,543 (0.31; 74,034; 2016)	851	217
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [5]	*Halichoerus grypus*	Western North Atlantic	-/-; N	27,131 (0.19; 23,158, 2016)	1,389	4,729
Harbor seal	*Phoca vitulina*	Western North Atlantic	-/-; N	75,834 (0.15; 66,884, 2012)	2,006	350

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds potential biological removal (PBR) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *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. In some cases, CV is not applicable.

[3] Pace,RM. 2021. Revisions and Further Evaluations of the Right Whale Abundance Model: Improvements for Hypothesis Testing. NOAA Technical Memorandum NMFS–NE–269.

[4] Potential biological removal, 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 size (OSP). Annual M/SI, found in NMFS' stock assessment reports (SARs), represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value.

[5] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

As indicated above, all 14 species (with 14 managed stocks) in Table 3 temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur, and NMFS has proposed authorizing it.

At the time the notice of proposed IHA published (86 FR 11930; March 1, 2021) 32 North Atlantic right whales have been recorded as confirmed dead or stranded. As of April 26, 2021, the number has increased to 34. Humpback whale mortalities have increased from 145 to 149 and minke whale mortalities increased from 103 to 105 cases during the same time period. Additionally, the estimated abundance of North Atlantic right whales has been revised to 368 (Pace, 2021) since the initial notice of proposed IHA was published (86 FR 11930; March 1, 2021).

In response to the initial notice of proposed IHA (86 FR 11930; March 1, 2021) a group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, National Wildlife Federation, Defenders of Wildlife, Southern Environmental Law Center, Wildlife Conservation Society, Surfrider Foundation, Mass Audubon, Friends of the Earth, International Fund for Animal Welfare, NY4WHALES, WDC Whale and Dolphin Conservation, Marine Mammal Alliance Nantucket, Gotham Whale, All Our Energy, Seatuck Environmental Association, Inland Ocean Coalition, Nassau Hiking & Outdoor Club, and Connecticut Audubon Society; and (2) the Delaware Department of Resources and Environmental Control (DNREC) commented that NMFS had not addressed recent findings associated with aerial and passive acoustic monitoring of North Atlantic right whales. This information is described below.

In the late fall months (*e.g.,* October), North Atlantic right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south along a migratory corridor to their calving grounds off Georgia and Florida. However, ongoing research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017; Oleson *et al.,* 2020). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round North Atlantic right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Acoustic monitoring data from 2004 to 2014 indicated that the number of North Atlantic right whale vocalizations detected in the modified proposed project area were relatively constant throughout the year, with the exception of August through October when detected vocalizations showed an apparent decline (Davis *et al.,* 2017). Shifts in habitat use have also been observed. Cole *et al.* (2013) provided survey evidence that North Atlantic right whales were absent from the well-documented central Gulf of Maine winter habitat. Although present to some extent year round in the region south of Martha's Vineyard and Nantucket Islands (Oleson *et al.,* 2020), North Atlantic right whales have recently been observed feeding in large numbers in this area in the winter (Leiter *et al.,* 2017), which is outside of the 2016 Northeastern U.S. Foraging Area Critical Habitat. Observations of these transitions in North Atlantic right whale habitat use, variability in seasonal presence in identified core habitats, and utilization of habitat outside of previously focused survey effort prompted the formation of a NMFS' Expert Working Group, which identified current data collection efforts, data gaps, and provided recommendations for future survey and research efforts (Oleson *et al.,* 2020).

During the aerial surveys conducted in the Rhode Island/Massachusetts and Massachusetts Wind Energy Areas (WEAs) from 2011–2015, the highest number of North Atlantic right whale sightings (n) occurred in March (n=21), with sightings also occurring in December (n=4), January (n=7), February (n=14), and April (n=14), and no sightings in any other months (Kraus *et al.,* 2016). There was not significant variability in sighting rate among years, indicating consistent annual seasonal use of the area by North Atlantic right whales. Despite the lack of visual detection, North Atlantic right whales were acoustically detected in 30 out of the 36 recorded months (Kraus *et al.,* 2016). While density data from Roberts *et al.* (2020) confirm that the highest density of North Atlantic right whales in the project area occurs in March, it is clear that North Atlantic right whales are present in or near the project area throughout the year, particularly south of Martha's Vineyard and Nantucket Islands, which is thought to be an important foraging area, and that habitat use is changing (Leiter *et al.,* 2017; Stone *et al.,* 2017; Oleson *et al.,* 2020). The modified proposed project area is part of an important migratory area for North Atlantic right whales; this migratory area is comprised of the waters of the continental shelf offshore the East Coast of the United States and extends from Florida through Massachusetts. Aerial surveys conducted in and near the project area from 2011–2015 documented a total of six instances of feeding behavior by North Atlantic right whales (Kraus *et al.,* 2016). Finally, the modified proposed project area is located within the North Atlantic right whale migratory corridor Biologically Important Area (BIA), which is applicable November 1 through December 31, 2021 and March 1, 2022 through April 31, 2022 and extends from Florida to Massachusetts (LeBreque *et al.,* 2015).

NMFS has reviewed recent draft Stock Assessment Reports, information on any other relevant Unusual Mortality Events, and recent scientific literature, and determined that no additional new information affects the analysis of impacts under the initial IHA.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting Mayflower's initial proposed IHA covering Lease Area OCS–A 0521 and potential export cable routes (86 FR 11930; March 1, 2021). There is no new information on potential effects which would impact our analysis.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a

marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones (EZs) and shutdown measures), discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized even in the absence of mitigation.

As described previously, no mortality is anticipated or proposed to be authorized for this activity even without the employment of mitigation measures. Below NMFS describes how the take is estimated.

Generally speaking, NMFS estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. NMFS notes that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, NMFS describes the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner NMFS considers Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 micropascal root mean square (1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Mayflower's proposed activity includes the use of intermittent sources (geophysical survey equipment), and therefore use of the 160 dB re 1 μPa (rms) threshold is applicable.

Level A harassment for non-explosive sources—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). Mayflower's proposed activities that could result in take by harassment include the use of impulsive and non-impulsive sources.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups were calculated. The updated acoustic thresholds for impulsive and non-impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level (peak SPL) metrics. As dual metrics, NMFS considers onset of permant threshold shift (PTS) (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

These thresholds are provided in Table 4 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 4—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 cumulative sound exposure level (L_E) has a reference value of 1μPa^2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute 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 cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, NMFS describes operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The proposed survey activities would entail the use of HRG equipment. The distance to the isopleth corresponding to the threshold for Level B harassment was calculated for all HRG equipment with the potential to result in harassment of marine mammals. NMFS has developed a methodology for determining distance to the 160-dB isopleth for the purposes of estimating take by Level B harassment resulting from exposure to HRG survey equipment. This methodology incorporates frequency and some directionality to refine estimated ensonified zones. Mayflower used the methods specified in the interim methodology. For sources that operate with different beam widths, the maximum beam width was used. The lowest frequency of the source was used when calculating the absorption coefficient. The formulas used to apply the methodology are described in detail in Appendix A of the IHA application.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016), when available, be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. This was done for the sparker and boomer shown in Table 5. If there is no relevant information provided by Crocker and Fratantonio (2016) for a specific device, then manufacturers data should be used. This was done for the sub-bottom profiler in Table 5.

TABLE 5—ESTIMATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR THE PLANNED SURVEY EQUIPMENT

Representative system(s)	Distance (m) to Level A harassment threshold [1]					Distance to Level B harassment threshold (m)
	LFC	MFC	HFC	PPW	OPW	All marine mammals
Sparker						
SIG ELC 820 @750 J	1	<1	[2] 4	<1	<1	141
Sub-bottom Profiler						
Teledyne Benthos Chirp III	2	<1	57	1	<1	66
Boomer						
Applied Acoustics S-boom @700 J	<1	<1	[2] 1	<1	<1	90

[1] Distances to the Level A harassment threshold based on the larger of the dual criteria (peak SPL and SEL_{cum}) are shown.
[2] Peak SPL pressure level resulted in larger isopleth than SEL_{cum}.

Modeling of distances to isopleths corresponding to the Level A harassment threshold was performed for all types of HRG equipment proposed for use with the potential to result in harassment of marine mammals. Mayflower used a model developed by JASCO to calculate distances to Level A harassment isopleths based on both the peak SPL and the SEL_{cum} metric. Additional details regarding the JASCO model may be found in the initial proposed IHA (86 FR 11930; March 1, 2021).

Modeled distances to isopleths corresponding to the Level A harassment threshold are very small (<1 m in most cases) for three of the four marine mammal functional hearing groups that may be impacted by the survey activities (*i.e.,* low frequency and mid frequency cetaceans, and phocid pinnipeds). Based on the extremely small Level A harassment zones for these functional hearing groups, the potential for species within these functional hearing groups to be taken by Level A harassment is considered so low as to be discountable. These three functional hearing groups encompass all but one of the marine mammal species that may be impacted by the planned activities. There is one species (harbor porpoise) within the high frequency functional hearing group that may be impacted by the planned activities. However, the largest modeled distance to the Level A harassment threshold for the high frequency functional hearing group was 57 m (Table 5) for the Chirp III. This is likely a conservative assessment given that the JASCO model treats all devices as impulsive and results in gross overestimates for non-impulsive devices. Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source, and mitigation measures—including a 100 m exclusion zone for harbor porpoises—are expected to minimize the potential for close approach or longer duration exposure to active HRG sources. In addition, harbor porpoises are a notoriously shy species which is known to avoid vessels. Harbor porpoises would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment). Therefore, NMFS has determined that the potential for take by Level A harassment of harbor porpoises or any other species is so low as to be discountable and does not propose authorizing take by Level A harassment of any marine mammals. Note that this is the same finding that was included in the initial notice or proposed IHA (86 FR 11930; March 1, 2021).

The largest distance to the 160 dB SPL_{rms} Level B harassment threshold is expected to be 141 m from the sparkers. This distance was used as described in this section to estimate the area of water potentially exposed above the Level B harassment threshold by the planned activities.

As shown in Table 1, up to 14,350 km of survey activity may occur from June through December 2021, including turns between lines or occasional testing of equipment while not collecting geophysical data. For the purposes of calculating take, Mayflower's HRG survey activities have been split into two different areas, (1) the lease area plus the deep-water portion of the cable routes, and (2) the shallow water portions of the cable routes including very shallow water sections of the cable routes.

Within the Lease Area and deep-water portion of the cable route, the vessel will conduct surveys at a speed of approximately 3 knots (5.6 km/hr) during mostly 24-hr operations. Allowing for weather and equipment downtime, the survey vessel is expected to collect geophysical data over an average distance of 80 km per day. Using a 160 dB SPL_{rms} threshold distance of 141 m, the monthly average total ensonified area is estimated to be 282.8 km^2 within the Lease Area and deep-water portion of the cable route.

Along the shallow-water portion of the cable route, survey vessels will also conduct surveys at a speed of approximately 3 knots (5.6 km/hr) during either daylight only or 24-hour operations. Survey operations in very shallow water will occur only during daylight hours. Allowing for weather and equipment downtime, the survey vessels are expected to cover an average distance of approximately 30–60 km per day in shallow waters and only 15 km per day in very shallow waters. Assuming daylight only operations and 30 km per day of surveys in shallow waters results in slightly larger ensonified area estimates. Distributing the 3,250 km of survey data to be collected in shallow waters and the 4,100 km to be collected in very shallow waters across the 7-month period of anticipated activity results in approximately 15.5 and 39 survey days per month in shallow and very-shallow waters, respectively. Using a 160 dB SPL_{rms} threshold distance of 141 m, the total daily ensonified area in shallow waters is estimated to be 8.5 km^2, and in very-shallow waters 4.3 km^2. Combined, these result in an average monthly ensonified area in the combined shallow water survey areas of 299.5 km^2.

Marine Mammal Occurrence

In this section NMFS provides the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Note that Mayflower submitted a partial marine mammal monitoring report under the existing IHA (85 FR 45578; July 39, 2021) which included the first 90 days of survey work. A total of 415 individual identifiable marine mammals from six species were observed within the predicted Level B harassment zone while an HRG source was active. These observations included one humpback whale, two minke whales, two sei whales, three bottlenose dolphins and 405 common dolphins. There were also two unidentified seal observations. An additional 24 unidentified dolphins and one unidentified whale were observed inside the estimated Level B harassment zone but those observations could not be identified to the species level. All mitigation and monitoring requirements were followed and Mayflower did not exceed authorized take limits for any species.

Density estimates for all species except North Atlantic right whale within the deep and shallow portions of the survey areas were derived from habitat-based density modeling results reported by Roberts *et al.* (2016, 2017, 2018). Those data provide abundance estimates for species or species guilds within 10 km × 10 km grid cells (100 km^2) on a monthly or annual basis, depending on the species. In order to select a representative sample of grid cells in and near the survey areas, a 10-km wide perimeter around the lease area and an 8-km wide perimeter around the cable routes were created in GIS (ESRI 2017). The perimeters were then used to select grid cells near the survey areas containing the most recent monthly or annual estimates for each species in the Roberts *et al.* (2016, 2017, 2018) data. The average monthly abundance for each species in each survey area was calculated as the mean value of the grid cells within each survey area in each month and then converted to density (individuals/1 km^2) by dividing by 100 km^2 (Table 6, Table 7).

The estimated monthly densities of North Atlantic right whales were based on updated model results from Roberts *et al.* (2020). These updated data for North Atlantic right whale are provided as densities (individuals/1 km^2) within 5 km × 5 km grid cells (25 km^2) on a monthly basis. The same GIS process described above was used to select the appropriate grid cells from each month and the monthly North Atlantic right whale density in each survey area was calculated as the mean value of the grid cells within each survey area as shown in Table 6 and Table 7.

The estimated monthly density of seals provided in Roberts *et al.* (2018) includes all seal species present in the region as a single guild. Based upon a recommendation from NMFS, Mayflower did not separate this guild into the individual species based on the proportion of sightings identified to each species within the dataset because so few of the total sightings used in the Roberts *et al.* (2018) analysis were actually identified to species (Table 6, Table 7).

Marine mammal densities from Roberts *et al.* (2018) data in areas immediately adjacent to the coast and within Nantucket Sound were used when calculating potential takes from survey activities within Narragansett Bay. This is a conservative approach since there have only been a few reported sightings of marine mammal species, besides seals, within Narragansett Bay (Raposa 2009).

For comparison purposes and to account for local variation not captured by the predicted densities provided by Roberts *et al.* (2016, 2017, 2018, 2020), Protected Species Observers (PSOs) data from Mayflower's 2020 HRG surveys were analyzed to assess the appropriateness of the density-based take calculations. To do this, the total number of individual marine mammals sighted by PSOs within 150 m of a sound source (rounding up from the 141-m Level B harassment distance) from April 19 through September 19, 2020, a period of 23 weeks, were summed by species or ''unidentified'' species group when sightings were not classified to the species level. As a conservative approach, all sightings were included in this calculation regardless of whether the source was operating at the time. In order to include the ''unidentified'' individuals in the species-specific calculations, the number of individuals in each unidentified species group (*e.g.,* unidentified whale) was then added to the sums of the known species within that group (*e.g.,* humpback whale, fin whale, etc.) according to the proportion of individuals within that group positively identified to the species level. With individuals from ''unidentified'' species sightings proportionally distributed among the species, Mayflower then divided the total number of individuals of each species by the number of survey weeks to calculate the average number of individuals of each species sighted within 150 m of the sound sources per week during the surveys. See section 6.4 in application for additional detail.

As described in the *Dates and Duration* section, Mayflower currently proposes for its survey activities to be concluded in December 2021. If the proposed survey activities extend beyond December 2021, the monthly

densities for the marine mammals listed below may change, potentially affecting take values. In that situation, Mayflower would need to contact NMFS to determine a path forward to ensure that they remain in compliance with the MMPA.

TABLE 6—AVERAGE MONTHLY DENSITIES FOR SPECIES THAT MAY OCCUR IN THE LEASE AREA AND ALONG THE DEEP-WATER SECTION OF THE CABLE ROUTE DURING THE PLANNED SURVEY PERIOD

Species	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mysticetes							
Fin Whale	0.0025	0.0025	0.0024	0.0020	0.0013	0.0011	0.0012
Humpback Whale	0.0012	0.0013	0.0009	0.0020	0.0015	0.0005	0.0006
Minke Whale	0.0018	0.0007	0.0005	0.0005	0.0005	0.0003	0.0004
North Atlantic Right Whale	0.0002	0.0000	0.0000	0.0000	0.0001	0.0005	0.0028
Sei Whale	0.0002	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Odontocetes							
Atlantic White-Sided Dolphin	0.0449	0.0318	0.0180	0.0183	0.0234	0.0249	0.0317
Common Bottlenose Dolphin	0.0267	0.0585	0.0483	0.0546	0.0459	0.0223	0.0136
Harbor Porpoise	0.0133	0.0088	0.0080	0.0067	0.0081	0.0267	0.0260
Pilot Whales	0.0046	0.0046	0.0046	0.0046	0.0046	0.0046	0.0046
Risso's Dolphin	0.0001	0.0003	0.0006	0.0005	0.0002	0.0002	0.0004
Short-Beaked Common Dolphin	0.0410	0.0432	0.0747	0.1187	0.1280	0.0903	0.1563
Sperm Whale	0.0001	0.0003	0.0003	0.0001	0.0001	0.0001	0.0000
Pinnipeds							
Seals (Harbor and Gray)	0.0322	0.0078	0.0041	0.0054	0.0085	0.0091	0.0345

TABLE 7—AVERAGE MONTHLY DENSITIES FOR SPECIES THAT MAY OCCUR ALONG THE SHALLOW-WATER SECTION OF THE CABLE ROUTES DURING THE PLANNED SURVEY PERIOD

Species	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mysticetes							
Fin Whale	0.0003	0.0003	0.0003	0.0003	0.0002	0.0001	0.0001
Humpback Whale	0.0001	0.0001	0.0000	0.0001	0.0002	0.0001	0.0017
Minke Whale	0.0002	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
North Atlantic Right Whale	0.0000	0.0000	0.0000	0.0000	0.0000	0.0001	0.0005
Sei Whale	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Odontocetes							
Atlantic White-Sided Dolphin	0.0010	0.0006	0.0005	0.0008	0.0014	0.0011	0.0006
Common Bottlenose Dolphin	0.2308	0.4199	0.3211	0.3077	0.1564	0.0813	0.0174
Harbor Porpoise	0.0048	0.0023	0.0037	0.0036	0.0003	0.0214	0.0253
Pilot Whales	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Risso's Dolphin	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Short-Beaked Common Dolphin	0.0003	0.0002	0.0006	0.0009	0.0008	0.0010	0.0006
Sperm Whale	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Pinnipeds							
Seal (Harbor and Gray)	0.2496	0.0281	0.0120	0.0245	0.0826	0.5456	1.3589

Take Calculation and Estimation

Here NMFS describes how the information provided above is brought together to produce a quantitative take estimate.

The potential numbers of takes by Level B harassment were calculated by multiplying the monthly density for each species in each survey area shown in Table 6 and Table 7 by the respective monthly ensonified area within each survey area. The results are shown in the ''Calculated Take'' columns of Table 8. The survey area estimates were then summed to produce the ''Total Density-based Calculated Take'' and then rounded up to arrive at the number of ''Density-based Takes'' for each species (Table 8).

To account for potential local variation in animal presence compared to the predicted densities, the average weekly number of individuals for each species observed within 150 m of the HRG survey sound sources in 2020, regardless of their operational status at the time were multiplied by the anticipated 32-week survey period in 2021. Note that the initial notice of proposed IHA (86 FR 11930; March 1, 2021) assumed that the survey period would be 35 weeks with the same number of survey days (471). These results are shown in the ''Sightings-based Takes'' column of Table 8. The larger of the take estimates from the density-based and sightings-based methods are shown in the ''Proposed Take'' column, except as noted below.

Based on density and sightings data for the modified Project Area, Mayflower modified its take authorization request and NMFS concurred with its modification. Accordingly, NMFS proposes to authorize the following take reductions by Level B harassment as part of the modified proposed IHA: 37 to 33 humpback whale takes; 15 to 14 minke whale takes; 85 to 57 Atlantic white-sided dolphin takes; 2,153 to 1,969 common dolphin takes; 61 to 46 harbor porpoise takes; and 989 to 718 seal takes. The number of proposed takes by Level B harassment for bottlenose dolphins has been increased from 483 to 536.

The differences in requested take for four species (Atlantic white-sided dolphin, common bottlenose dolphin, harbor porpoise, and seals) resulted from a combination of different monthly densities as well as a different monthly ensonified area being applied to those densities. The same calculations were performed for all species, so the relative changes in the requested take for these species was driven by the amount of change in monthly densities for each species. The densities changed between applications for two reasons, (1) the survey area location was changed to include the alternative cable route and (2) the months in which the activity will occur were shifted later in the year, from April–November to June–December. The various combinations of changes to these factors resulted in different relative changes to the requested takes for these four species.

For the other three species (*i.e.,* humpback whale, minke whale, common dolphin) take calculated based on Roberts *et al.* densities was considerably lower than observed numbers of animals during the 2020 surveys. Therefore, the numbers of observations per week were considered more representative of the area densities. For humpback whale, the requested take in the original proposed IHA was based on the average weekly sightings rate from 2020 PSO observations (1.04 humpback whales/week). The reduction in the proposed take is a result of the shortened overall length of the activity from 35 weeks to 32 weeks. For minke whale, the average weekly sightings rate from 2020 PSO observations (0.43 minke whales/week) reduced proposed take due to shortened overall length of the activity (from 35 weeks to 32 weeks). The same reduction in proposed take of common dolphin was similarly based on the average weekly sightings rate from 2020 PSO observations (61.52 common dolphins/week) and the decreased overall length of the activity. The reduction in the requested take is a result of the shortened overall length of the activity (from 35 weeks to 32 weeks).

Using the best available density data (Roberts *et al.* 2016, 2017, 2018, 2020), Mayflower requested and NMFS proposes to authorize 57 takes of white-sided dolphin, 536 takes of bottlenose dolphin and 46 harbor porpoise takes by Level B harassment. For six species, humpback whale, North Atlantic right whale, sei whale, pilot whales, Risso's dolphin, and sperm whale the proposed take column reflects a rounding up of three times the mean group size calculated from survey data in this region (Kraus *et al.* 2016; Palka *et al.* 2017). Three times the group size was used rather than a single group size to account for more than one chance encounter with these species during the surveys.

NFMS concurred with this assessment and, therefore, proposes the authorization of 9 North Atlantic right whale, 6 fin whale, 6 sei whale, 27 pilot whale, 18 Risso's dolphin, and 6 sperm whale takes by Level B harassment. The proposed take authorization numbers for these species remains unchanged from the original proposed IHA.

The proposed number of takes by Level B harassment as a percentage of the ''best available'' abundance estimates provided in the most recent NMFS draft Stock Assessment Reports (Hayes *et al.* 2020) are also provided in Table 8. For the seal guild, the estimated abundance for both gray and harbor seals was summed in Table 8. Mayflower requested and NMFS proposes to authorize 718 incidental takes of harbor and gray seal by Level B harassment.

Bottlenose dolphins encountered in the survey area would likely belong to the Western North Atlantic Offshore Stock (Hayes *et al.* 2020). However, it is possible that a few animals encountered during the surveys could be from the North Atlantic Northern Migratory Coastal Stock, but they generally do not range farther north than New Jersey. Also, based on the distributions described in Hayes *et al.* (2020), pilot whale sightings in the survey area would most likely be long-finned pilot whales, although short-finned pilot whales could be encountered in the survey area during the summer months.

For North Atlantic right whales, the implementation of a 500 m exclusion zone means that the likelihood of an exposure to received sound levels greater than 160 dB SPL_{rms} is very low. In addition, most of the survey activity will take place during the time of year when North Atlantic right whales are unlikely to be present in this region. Nonetheless, it is possible that North Atlantic right whales could occur within 500 m of the vessel without first being detected PSO, so Mayflower requested and NMFS proposes to authorize take consistent with other species (*i.e.* three times average group size).

TABLE 8—NUMBER OF LEVEL B TAKES PROPOSED AND PERCENTAGES OF EACH STOCK ABUNDANCE

	Lease area + deep water cable	Shallow water cable	Total density-based takes	Density based takes	Sightings based takes	Proposed takes	Abundance	Percent of stock abundance
Mysticetes								
Fin Whale	3.7	0.5	4.1	5	1	6	3,006	0.2
Humpback Whale	2.2	0.7	2.9	3	33	33	1,396	2.4
Minke Whale	1.3	0.1	1.5	2	14	14	2,591	0.5
North Atlantic Right Whale	1.0	0.2	1.2	2	0	9	368	2.4
Sei Whale	0.1	0.0	0.1	1	0	6	28	21.4
Odontocetes								
Atlantic White-Sided Dolphin	54.6	1.8	56.4	57	0	57	31,912	0.2
Common Bottlenose Dolphin	76.3	459.6	536.0	536	59	536	62,851	0.9
Harbor Porpoise	27.6	18.4	46.0	46	0	46	75,079	0.1
Pilot Whales	9.2	0.0	9.2	10	17	27	68,139	0.0
Risso's Dolphin	0.7	0.0	0.7	1	0	18	35,493	0.1
Short-Beaked Common Dolphin	184.5	1.3	185.8	186	1,969	1,969	80,227	2.5

TABLE 8—NUMBER OF LEVEL B TAKES PROPOSED AND PERCENTAGES OF EACH STOCK ABUNDANCE—Continued

	Lease area + deep water cable	Shallow water cable	Total density-based takes	Density based takes	Sightings based takes	Proposed takes	Abundance	Percent of stock abundance
Sperm Whale	0.3	0.0	0.3	1	0	6	4,349	0.1
Pinnipeds								
Seals (Harbor and Gray)	28.7	689.2	718.0	718	141	718	102,965	0.7

Proposed Mitigation

The mitigation, monitoring, and reporting measures described here are identical to those included in the **Federal Register** notice announcing the initial proposed IHA and the discussion of the least practicable adverse impact included in that document remains accurate (86 FR 11930; 2021).

Marine Mammal Exclusion Zones and Harassment Zones

NMFS proposes the following mitigation measures be implemented during Mayflower's proposed marine site characterization surveys.

Marine mammal EZs would be established around the HRG survey equipment and monitored by PSOs during HRG surveys as follows:

- A 500-m EZ would be required for North Atlantic right whales during use of all acoustic sources; and
- 100 m EZ for all marine mammals, with certain exceptions specified below, during operation of impulsive acoustic sources (boomer and/or sparker).

If a marine mammal is detected approaching or entering the EZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Pre-Clearance of the Exclusion Zones

Mayflower would implement a 30-minute pre-clearance period of the EZs zones prior to the initiation of ramp-up of HRG equipment. During this period, the EZs will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective EZ. If a marine mammal is observed within an EZ during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective EZ or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Project Area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power.

A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. When technically feasible, the power would then be gradually turned up and other acoustic sources would be added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective EZ. Ramp-up will continue if the animal has been observed exiting its respective EZ or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Activation of survey equipment through ramp-up procedures may not occur when visual observation of the pre-clearance zone is not expected to be effective (*i.e.,* during inclement conditions such as heavy rain or fog).

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment would be required if a marine mammal is sighted entering or within its respective EZ. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective EZ or until an additional time period has elapsed *(i.e.,* 30 minutes for all other species).

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (48 m, non-impulsive; 141 m impulsive), shutdown would occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective EZ. If the acoustic source is shut down for a period longer than 30 minutes and PSOs have maintained constant observation, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement would be waived for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops* and seals. Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped detected in the EZ and belongs to a genus other than those specified.

Vessel Strike Avoidance

Mayflower will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

• Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a North American right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal.

• All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect;

• All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots or less while transiting to and from Project Area;

• All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

• All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.

• All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.

• All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

• When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

• These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

• Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the Lease Areas during the survey, the vessels will abide by speed restrictions in the DMA.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

The monitoring, and reporting measures described here are identical to those included in the **Federal Register** notice announcing the initial proposed IHA (86 FR 11930; March 1, 2021).

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Mayflower would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including EZs, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established EZs during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

Vessels conducting HRG survey activities in very-shallow waters using shallow-draft vessels are very limited in the number of personnel that can be onboard. In such cases, one visual PSO will be onboard and the vessel captain (or crew member on watch) will

conduct observations when the PSO is on required breaks. All vessel crew conducting PSO watches will receive training in monitoring and mitigation requirements and species identification necessary to reliably carry out the mitigation requirements. Given the small size of these vessels, the PSO would effectively remain available to confirm sightings and any related mitigation measures while on break.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity toEZs. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Pauline@noaa.gov.* The report must contain, at minimum, the following:

- PSO names and affiliations
- Dates of departures and returns to port with port name
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.)

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other);
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Mayflower must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Mayflower personnel discover an injured or dead marine mammal, Mayflower would report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible ((866) 755–6622). The report would 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.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Mayflower would report the incident to the NMFS OPR (*PRITP.MonitoringReports@noaa.gov*) and the NMFS New England/Mid-

Atlantic Stranding Coordinator ((866) 755–6622) as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 8 given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. Where there are meaningful differences between species or stocks—as in the case of the North Atlantic right whale—they are included as separate subsections below.

NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activity on Marine Mammals and their Habitat section in the initial notice of proposed IHA (86 FR 11930; March 1, 2021), non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B harassment behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required shutdown zones for certain activities—and is not proposed to be authorized. The potential effects associated with the addition of the new export cable route extending through Narragansett Bay are similar to those described in the initial notice of proposed IHA (86 FR 11930; March 1, 2021).

In addition to being temporary, the maximum expected harassment zone for the modified proposed IHA is identical to that in the initial proposed IHA with a distance of 141 m per vessel. Therefore, the ensonified area surrounding each vessel is also identical, and relatively small, compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the modified Project Area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Similar to the initial proposed IHA, given the temporary nature of the disturbance and availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations in the modified proposed IHA.

Furthermore, the modified proposed Project Area is located approximately 50 miles west of feeding BIAs for North Atlantic right whales (February–April) and sei whales (May–November) and approximately 40 west of feeding BIAs for humpback whales (March–December) and fin whales (March–October). These were discussed in the previous IHA (85 FR 45578; July 29, 2020) issued for this area. Additionally, the new proposed Narragansett Bay cable route corridor is located just to the north of the another fin whale BIA (March–October) located south of Martha's Vineyard. Even if whales are feeding outside of the identified feeding BIAs, they are extensive and sufficiently large (705 km^2 and 3,149 km^2 for North Atlantic right whales; 47,701 km^2 for humpback whales; 2,933 km^2 for fin whales; and 56,609 km^2 for sei whales), and the acoustic footprint of the proposed survey is sufficiently small, such that feeding opportunities for these whales would not be reduced appreciably. Therefore, under the modified proposed IHA, NMFS does not expect impacts to whales within feeding BIAs to affect the fitness of any large whales. Furthermore, NMFS does not anticipate impacts from the modified proposed survey that would impact annual rates of recruitment or survival and any takes that occur would not result in population level impacts.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the modified proposed Project Area. Furthermore, there is no designated critical habitat for any ESA-listed marine mammals in the proposed Project Area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. In addition to the right whale feeding BIA located west of the modified proposed Project Area noted above, the modified proposed Project Area overlaps a migratory corridor BIA for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). Off the coast of Massachusetts, this migratory BIA extends from the coast to beyond the shelf break. Due to the fact that that the proposed survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the proposed survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Mayflower's proposed activities. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been requested by Mayflower and is being proposed by NMFS as HRG survey operations are required to maintain a 500 m EZ and shutdown if a North Atlantic right whale is sighted at or within the EZ. The 500 m shutdown zone for North Atlantic right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* GeoMarine Geo-Source 400 tip sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use.

As described previously, North Atlantic right whale presence is increasingly variable in identified core habitats, including the recently identified foraging area south of Martha's Vineyard and Nantucket islands where both visual and acoustic detections of North Atlantic right whales indicate a nearly year-round presence (Oleson *et al.,* 2020), although seasonal trends are still prominent (Hayes *et al.,* 2020). However, prey for North Atlantic right whales are mobile and broadly distributed throughout the project area; therefore, North Atlantic right whales are expected to be able to resume foraging once they have moved away from any areas with disturbing levels of underwater noise. In addition, there are no North Atlantic right whale mating or calving areas within the proposed project area.

Given the information above, NMFS does not anticipate North Atlantic right whales takes that would result from Mayflower's proposed activities would impact the reproduction or survival of any individual North Atlantic right whales, much less annual rates of recruitment or survival. Thus, any takes that occur under the modified proposed IHA would not result in population level impacts for the species.

Other Marine Mammal Species With Active UMEs

As noted in the previous IHA (85 FR 45578; July 29, 2020) there are several active UMEs occurring in the vicinity of Mayflower's modified proposed Project Area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (350) is well below PBR (2,006) (Hayes *et al.,* 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 505,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic Exclusive Economic Zone as well as in Canada (Hayes *et al.,* 2020).

The required mitigation measures are expected to reduce the number and/or severity of proposed takes for all species listed in Table 8, including those with active UME's to the level of least practicable adverse impact. In particular they would provide animals the opportunity to move away from the sound source throughout the modified proposed Project Area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization.

NMFS expects that takes would be in the form of short-term Level B harassment behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

The total duration of the modified proposed HRG survey activities is 471 survey days and the total trackline distance is 14,350 km which are identical to the values presented in the initial proposed IHA (86 FR 11930; March 1, 2021) and any effects or impacts are expected to be similar. Note that proposed takes in the modified proposed IHA have been reduced for 6 species from the initial proposed IHA (*i.e.,* humpback whale, minke whale, Atlantic white-sided dolphin, common dolphin, harbor porpoise and seal) while proposed take has only increased for one species (*i.e.,* bottlenose dolphin).

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 the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed for authorization;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- Due to the relatively small footprint of the survey activities in relation to the size of feeding BIAs for North Atlantic right, humpback, fin, and sei whales, the survey activities would not affect foraging success of these whale species;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the Project Area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be limited to Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the Project Area;
- While the Project Area is within areas noted as a migratory BIA for North Atlantic right whales, the activities would occur in such a comparatively small area such that any avoidance of the Project Area due to activities would not affect migration. In addition, mitigation measures to shutdown at 500 m to minimize potential for Level B behavioral harassment would limit any take of the species;
- While the foraging areas south of Martha's Vineyard and Nantucket overlap with the Project Area, prey for North Atlantic right whales are mobile and broadly distributed. Therefore, North Atlantic right whales are expected to be able to resume foraging once they have moved away from any areas with disturbing noise levels, which would be temporary in nature;
- The proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals; and
- While UMEs are in effect for some species, the take from Mayflower's activities is not expected to impact the reproduction or survival of any individuals of any species, and therefore, is not expected to impact annual rates of recruitment or survival either alone or in combination with the effects of the UMEs.

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 modified proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take of 14 marine mammal species. The total amount of takes proposed for authorization is less than 3 percent for all species and stocks authorized for take except for sei whales (less than 22 percent), which NMFS preliminarily finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks. See Table 8. Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever NMFS proposes to authorize take for endangered or threatened species.

The NMFS OPR is proposing to authorize the incidental take of four species of marine mammals listed under the ESA: The North Atlantic right, fin, sei, and sperm whale. The OPR has requested initiation of Section 7 consultation with NMFS GARFO for the issuance of this IHA. NMFS will conclude the ESA section 7 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 an IHA to Mayflower for conducting marine site characterization surveys offshore of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0521) and along a potential submarine cable routes to landfall at Falmouth, Massachusetts and Narragansett Bay for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the modified proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

NMFS requests comment on our analyses, the proposed authorization, and any other aspect of this notice of a modified proposed IHA for the proposed marine site characterization surveys. NMFS also requests at this time comment on the potential Renewal of this modified proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA

following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, 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.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–10551 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB068]

Taking of Marine Mammals Incidental to Specific Activities; Taking of Marine Mammals Incidental to Pile Driving and Removal Activities During Construction of the Hoonah Marine Industrial Center Cargo Dock Project, Hoonah, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the City of Hoonah (City) to incidentally harass, by Level A and Level B harassment, marine mammals during pile driving activities associated with construction upgrades of a cargo dock at the city-owned Hoonah Marine Industrial Center (HMIC) in Port Frederick Inlet on Chichagof Island in Hoonah, Alaska.

DATES: This Authorization is effective for one year from issuance.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, or for anyone who is unable to comment via electronic mail, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On October 28, 2020 NMFS received a request from the City for an IHA to take marine mammals incidental to pile driving and removal during construction upgrades of a cargo dock at the HMIC in Port Frederick Inlet on Chichagof Island in Hoonah, Alaska. The application was deemed adequate and complete on February 2, 2021. The applicant's request is for take of nine species of marine mammals by Level B harassment and five species by Level A harassment. Neither the City nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Planned Activity

The purpose of this project is to make upgrades to the HMIC. Upgrades to the site include the installation of three breasting dolphins, a sheet pile bulk cargo dock, fender piles, and a catwalk. The planned upgrades are needed to continue safely accommodating barges and other vessels delivering essential goods to the City. The planned project at the HMIC is located in Port Frederick Inlet, approximately 0.8 kilometers (km) (0.5 miles) northwest of downtown Hoonah 0.24 km (0.15 miles) east of the State of Alaska Ferry Terminal in Southeast Alaska.

The City is only accessible by air and water. Small amounts of cargo are transported into the community by plane; however, the majority is delivered weekly by barges from April through September (AML 2020). When

weather permits, front load barges utilize a gravel landing located next to the existing City dock. The gravel landing provides a makeshift location to unload heavy cargo using a ramp and forklifts. During winter months, inclement weather events, and for more frequent deliveries, locals utilizes the Alaska Marine Highway System (AMHS) ferries and the local ferry terminal.

The purpose of HMIC cargo dock project is to make improvements to the existing gravel landing to enable barges to land during all conditions. The project is needed because the existing facility cannot provide consistent and safe berthing for barges. Once the project is completed, the City will be able to reliably receive goods year-round and in all weather conditions. Currently, Alaska Marine Line barges offers seasonal ramp barge service into the City; however, this project will allow for year-round, weekly deliveries by ocean going barges.

The project includes pile driving and removal over 110 working days (not necessarily consecutive) beginning in spring and extending through the summer of 2021 as needed. Approximately 50 days of vibratory and 28 days of impact hammering will occur. An additional 35 days of drilling/down-the-hole (DTH) will occur to stabilize the piles. The project would involve installing breasting dolphins, a solid fill sheet pile dock, and fender.

Construction of the three breasting dolphins would include:

- Installation of 10 temporary 30-inch (in) diameter steel piles as templates to guide proper installation of permanent piles (these piles would be removed prior to project completion); and
- Installation of 9 permanent 36-in diameter steel piles
  - Breasting Dolphin 1—(1) vertical 36-in steel pile and (2) 36-in batter steel piles
  - Breasting Dolphin 2—(1) vertical 36-in steel pile and (2) 36-in batter steel pile
  - Breasting Dolphin 3—(1) vertical 36-in steel pile and (2) 36-in batter steel pile

Construction of the bulk cargo dock would include (see Figure 4; Appendix A: Sheets 3–4 of the application):

- Installation of 20 temporary 30-in steel piles as templates to guide proper installation of permanent H-piles (these piles would be removed prior to project completion);
- Installation of 12 permanent H-piles to guide proper installation of sheets;
- Installation of 500 permanent sheet piles (130 linear feet); and
- Filling the area within sheet piles with 9,600 cubic yards of fill

Installation of the fender piles would include (see Figure 4; Appendix A: Sheet 3 of the application):

- Installation of 20 temporary 30-in steel piles as templates to guide proper installation of permanent fender piles (these piles would be removed prior to project completion);
- Installation of 6 permanent 20-in fender piles in front of sheet pile cargo dock

Construction Sequence

In-water construction of the HMIC cargo dock components is expected to occur via the following sequence:

(1) Vibrate twenty 30-inch temporary piles to use as a guide to install H-piles for the cargo dock.

(2) Vibrate and impact 12 H-piles to depth to hold the sheets into place.

(3) Remove the temporary piles.

(4) Using the H-piles as a guide, vibrate and impact 500 sheets into place to create a barrier prior to placing fill.

(5) Using an excavator place 9,600 cubic yards of fill within the newly constructed cargo dock frame.

After the completion of the cargo dock, the barge will move over to install the six fender piles at the existing city dock face using the following sequence:

(1) Vibrate 20 temporary 30-inch piles a minimum of ten feet into bedrock to create a template to guide installation of the permanent piles.

(2) Weld a frame around the temporary piles.

(3) Within the frame: Vibrate, impact, and socket six permanent 20-inch fender piles into place.

(4) Remove the frame and temporary piles.

(5) Perform this sequence at the other six fender pile locations.

The three breasting dolphins will be constructed as the barge moves off shore and will install temporary and permanent piles as follows:

(1) Vibrate 10 temporary 30-inch piles a minimum of ten feet into bedrock to create a template to guide installation of the permanent piles.

(2) Weld a frame around the temporary piles.

(3) Within the frame: Vibrate, impact, and socket one vertical and two batter 36-inch pile into place.

(4) Remove the frame and temporary piles.

(5) Perform this sequence at the second and third location working farther from the shoreline.

Please see Table 1 below for the specific amount of time required to install and remove piles.

Installation and Removal of Temporary (Template) Piles

Temporary 30-in steel piles would be installed and removed using a vibratory hammer (Table 1).

Installation of Permanent Piles

The permanent H-piles, 20-in, and 36-in piles would be installed through sand and gravel with a vibratory hammer until advancement stops. Then, the pile will be driven to depth with an impact hammer. If design tip elevation is still not achieved, the contractor will utilize a drill to secure the pile. (Note: This DTH method can also be referred to as DTH drilling. It is referred to as DTH throughout this document.) Pile depths are expected to be approximately 12 m to 21 m (40 to 70 feet (ft)) below the mudline and estimated to take approximately 1.25–10.5 hours (hrs) per pile to complete.

The permanent sheets would be installed using a vibratory hammer and impact hammer following the same criteria as above to achieve design tip elevation (Table 1). It is expected that it will take around 20 minutes to install each sheet.

TABLE 1—PILE DRIVING AND REMOVAL ACTIVITIES

	Project component					
	Temporary pile installation	Temporary pile removal	Permanent pile installation			
Vibratory Hammer						
Diameter of Steel Pile (inches)	30	30	36	H-piles	Sheets	20.
# of Piles	50	50	9	12	500 (130lf)	6.
Max # Piles Vibrated per Day	4	4	4	4	30 sheets	3.
Vibratory Time per Pile (min)	15	15	15	15	15	15.

TABLE 1—PILE DRIVING AND REMOVAL ACTIVITIES—Continued

Vibratory Time per Day (min)	60	60	60	60	450 (7.5 hr)	45.
Number of Days	12.5	12.5	2.25	3	17	2.
Vibratory Time Total	12 hrs 30 mins	12 hrs 30 mins	2 hr 15 mins	3 hrs	292 hrs	1 hr 30 min.
Impact Hammer						
Diameter of Steel Pile (inches)			36	H-piles	Sheets	20.
# of Piles			9	12	500 (130lf)	6.
Max # Piles Impacted per Day			2	5	5 sheets	2.
Impact Time per Pile (min)			15	5	5	5.
Impact Time per Day (min)			30	20	25	10.
Number of Days			4.5 day	3	17 days	3.
Impact Time Total			2 hr 15 mins	1 hr	1 hr 30 mins	30 min.
Drilling/DTH						
Diameter of Steel Pile (inches)			36	H-Piles		20.
Total Quantity			9	12		6.
Anchor Diameter			33	20		20.
Max # Piles Anchored per Day			2	2		2.
Time per Pile			5–10 hrs	3–4 hrs		1 hr.
Actual Time Spent Driving per Pile			60 min	60 min		60 min.
Time per Day			12 hrs (max)	12 hrs (max)		12 hrs (max).
Actual Time Spent Driving per Day			72 mins (1 hr 12 mins; max).	2 hrs (max)		1 hr (max).
Blows per pile			27,000–54,000	20,000		15,000.
Number of Days			15 days	17 days		3 days.
Drilling Total Time			45–90 hours	20 hours		4 hours.

In addition to the activities described above, the planned action will involve other in-water construction and heavy machinery activities. Other types of in-water work including with heavy machinery will occur using standard barges, tug boats, and positioning piles on the substrate via a crane (*i.e.,* ''stabbing the pile'').

A detailed description of the planned Hoonah Cargo Dock project is provided in the **Federal Register** notice for the proposed IHA (86 FR 12630; March 4, 2020).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to the City was published in the **Federal Register** on March 4, 2021 (86 FR 12630). That notice described, in detail, the City's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from Defenders of Wildlife (Defenders). The comment letter is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* Please the letter for full detail regarding the comments and rationale.

Comment: Defenders asserts NMFS has failed to demonstrate the authorized take numbers are small. Defenders requests that the agency lower the Level B harassment take for all species. The number of allotted takes for a project should not equate to the number of predicted maximum sightings of that species. According to Defenders, large take authorizations represent significant proportions of the stocks in and of themselves, and those takes can impact many more animals in the stock. The commenters state that large take numbers accounting for the maximum estimate of animals to be seen during the course of the project do not promote any mitigation or protection for marine mammals in the area.

Response: NMFS disagrees with the Defenders assessment that we failed to demonstrate authorized take numbers are small. As discussed in the Small Numbers section of the proposed IHA and this final IHA, seven of the nine marine mammal stocks estimated total take are approximately 11 percent or less of the stock abundance. There are no official stock abundances for harbor porpoise and minke whales; however, as previously discussed in the notice of proposed IHA (86 FR 12630; March 4, 2020), for the abundance information that is available, the estimated takes are small percentages of the stock abundance. For harbor porpoise, the abundance for the Southeast Alaska stock is likely more represented by the aerial surveys that were conducted as these surveys had better coverage and were corrected for observer bias. Based on this data, the estimated take could potentially be approximately 4 percent of the stock abundance. For minke whales, in the northern part of their range they are believed to be migratory and so few minke whales have been seen during three offshore Gulf of Alaska surveys that a population estimate could not be determined. With only twelve estimated takes for this species, the percentage of take in relation to the stock abundance is likely to be very small. NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks. NMFS disagrees with the Defenders request to decrease the Level B harassment take for all species based on the calculations as Defenders asserted that the number of allotted takes for a project should not equate to the number of predicted maximum sightings of that species. In some of the estimated take calculations NMFS used a maximum number of species seen for its take calculations (*e.g.* Pacific white-sided dolphin). Using a maximum number of species seen is an acceptable way to estimate take and can be conservative when no density estimates are available. According to Defenders, large take authorizations represent significant proportions of the stocks in and of themselves, and those takes can impact many more animals in the stock. As discussed above NMFS made its small numbers determination based on the calculated take estimates compared to species abundance and all species were under NMFS' small numbers threshold of one-third of the best available population abundance. See the Small Numbers section, alter in this document, for more information.

Comment: Defenders states NMFS has not demonstrated that impacts to the

humpback whale DPSs will be negligible. Defenders states that NMFS must better explain how it reaches its conclusion and, as discussed below, how it is effecting the least practicable adverse impact on humpback whales DPSs.

Response: 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). In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS disagrees with much of what the Commenter asserts. First, we have carefully explained our interpretation of the least practicable adverse impact standard and how it applies to both stocks and individuals, in the Mitigation Measures section. Further, we have applied the standard correctly in this IHA in requiring measures that reduce impacts to individual marine mammals in a manner that reduces the probability and/or severity of population-level impacts. Specifically for humpback whales, for the effectiveness of mitigation, the shutdown zones are larger than the Level A harassment zones which, in combination with the fact that the zones are so small to begin with, is expected to avoid the likelihood of Level A harassment for all humpback whales. Regarding behavioral disturbance from pile driving activities, exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. Any reactions and behavioral changes for humpback whales are expected to subside quickly when the exposures cease and are unlikely to have any effects on individual fitness, let alone population effects. For effects on habitat, as previously discussed in the notice of proposed IHA, the HMIC Cargo Dock project would likely not impact any marine mammal habitat since its proposed location is within an area that is currently used by large shipping vessels and in between two existing, heavily-traveled docks, and within an active marine commercial and tourist area. In addition, impacts to marine mammal prey species are expected to be minor and temporary. The abundance of humpbacks in Port Frederick changes seasonally with the availability of prey. Humpbacks are generally present in large numbers from late fall-early winter through mid- to late spring, but are infrequent to uncommon during the mid-summer months when herring are absent. The project should be completed mostly, if not all, during the spring and some into the summer months.

Comment: Defenders claims that NMFS must more accurately define ''group size'' for humpback whales, and states that NMFS defines a maximum humpback group size as eight individuals for all months of the year, but cites no support for that maximum group size. The commenter goes on to suggest that NMFS must state how the agency is defining this term for the purpose of mitigating harm caused by this project. Additionally, Defenders states that regardless of how ''group'' is defined, humpback group size in Southeast Alaska varies dramatically throughout the year depending on prey availability and social group dynamics.

Response: The largest group of 8 humpback whales was observed most often in the previous Hoonah observer reports submitted to NMFS as part of the 2016 and 2019 Hoonah Berth cruise ship terminal projects (reports can be found here: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-pile-driving-and-removal-activities-during-construction-cruise*). On occasion, higher numbers have been reported for humpback whales during the prior Hoonah projects; however, those generally occurred late summer into the fall. For example, on 3 days there were slightly higher numbers of 13 whales observed (July and October 2019). The abundance of humpbacks in Port Frederick changes seasonally with the availability of prey and are not as common in larger numbers during the mid-summer months when herring are absent. Because the project will occur during the spring and extend into the summer months, NMFS believes it was appropriate to use the largest group of whales that were generally seen during this time period for its calculated take estimation during the proposed IHA and for this final IHA.

Comment: Defenders agrees with NMFS requiring PSOs for this project and for other nearshore marine construction projects as a mitigation measure in addition to appropriate time and space restrictions. However, Defenders encourages NMFS to provide formal PSO monitoring guidelines and requirements for reporting takes. In addition to NMFS requiring PSOs to report marine mammal sighting estimates as ''min/max/best,'' NMFS should require these estimates to be documented in the final publicly available report.

Response: NMFS does provide formal requirements for the PSOs to report during monitoring of the project. These are clearly described in the Monitoring and Reporting sections in the proposed and final **Federal Register** notice for these actions as well as in the actual IHA. The reporting, inclusive of estimated number of animals (min/max/best), are already required in the final publically available reports that NMFS posts to the website for every construction project at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities#active-authorizations.*

Comment: Defenders states that NMFS should require an additional PSO for easily photo identifiable species. Defenders encourages NMFS to mandate an additional PSO who is solely dedicated to photo-identification work. Defenders encourages NMFS to incorporate photo identification work into protected species observing primarily because this will allow PSOs to more reliably determine if individual animals are exposed to multiple takes, even if PSOs do not or cannot successfully match an individual in known identification catalogs.

Response: NMFS thanks Defenders for their comment on requiring PSO's to incorporate photo identification work into their monitoring requirements. Should the PSOs for this project submit any photos of easily identifiable species, such as humpback whales, as part of their final report, NMFS will share these with the appropriate individuals in the agency, scientists, and other managers for possible identification. However, NMFS does not agree that it is necessary to assign a PSO solely to conduct photo-identification work and does not agree with the recommendation.

Comment: Defenders states NMFS must discuss effects of multiple takes to individual humpback whales as they could be the same individual humpback whales exposed to multiple Level B harassment takes. The commenter states that it is inappropriate to assume that if a whale is displaced from its preferred site, then it will find the same success in another area. For these reasons, Defenders states that NMFS must address the impacts of cumulative Level B harassment takes being concentrated on the same individual whales, both to those whales and to the stock as a whole.

Response: NMFS acknowledges that an individual may be taken on more than one day. However, as discussed in the Negligible Impact Analysis and

Determination section, the authorized take is not expected to affect the reproductive success or survivorship of any individual marine mammal, particularly humpback whales. Given the lack of any impacts on the reproduction or survival of any affected individuals, there will be no effects on any species' annual rates of recruitment or survival in that year, and therefore no basis to suggest that impacts would accrue in a manner that would have a non-negligible impact on an affected species. During monitoring of the Hoonah Berth II cruise ship terminal project, zero humpback whales were sighted in June 2019. In July 2019, sightings were of a single individual, a pair, and a group of five humpback whales exhibiting traveling, diving, and foraging behaviors for a total of 23 humpback whales that were taken by Level B harassment over 16 days of in-water work. In August of 2019, there were 15 takes by Level B harassment over 8 days of in-water work and consisted of a single individual, a pair, and a group of four humpback whales exhibiting breaching, slapping, swimming, milling, traveling, diving, and foraging behaviors. Based on this observational data of low numbers of animals from June through August, even if some animals were repeated takes it would not be at a level that would impact the reproduction or survival of any affected individuals, let alone a species or stock.

Comment: Defenders states that NMFS should require temporal restrictions based around humpback whale bubble net feeding, based on the commenter's interpretation that the pile driving activity may disrupt bubble net feeding. The commenter notes the importance of this type of feeding activity.

Response: Humpback whales are relatively generalized in their feeding compared to some other baleen whales. In the Northern Hemisphere, known prey includes: Euphausiids (krill); copepods; juvenile salmonids; herring; Arctic cod; walleye pollock; pteropods; and cephalopods (Johnson and Wolman 1984, Perry *et al.* 1999, Straley *et al.* 2018).

According to the Biologically Important Areas dataset (Ferguson *et al.* 2015), the ensonified area and surrounding waters are important feeding habitat for humpback whales throughout the spring, summer, and fall. Feeding habitat from March through May exists just outside Port Frederick and thus outside the ensonified area, but is present in the vessel transit portion of the action area. From June through August, important areas for humpback whales include most of Port Frederick and the ensonified area. In the fall from September through November, important feeding habitat for humpback whales shifts along the eastern side of Port Frederick. There is no information to suggest that there would be sufficient impacts to feeding humpback whales, particularly during bubble netting, to indicate that the mitigation measure recommended by the commenter is warranted.

Humpback whales produce sounds less frequently in their summer feeding areas. Feeding groups produce distinctive sounds ranging from 20 hertz (Hz) to 2 kilohertz (kHz), with median durations of 0.2–0.8 seconds and source levels of 175–192 decibel (dB) (Thompson *et al.* 1986). These sounds are attractive and appear to rally animals to the feeding activity (D'Vincent *et al.* 1985, Sharpe and Dill 1997). The project will occur in an industrialized harbor, where vessel sounds and dock activity occurs frequently. We expect any additional contributions to masking from project activities would be very small and of short duration relative to the existing conditions and would not impact humpback whales that are bubble feeding. The short duration and limited affected area project-related noise will likely result in an insignificant amount of masking. Any masking that could possibly rise to Level B harassment would occur concurrently within the zones of behavioral harassment already estimated for vibratory pile driving, and which have already been taken into account in the analysis.

Comment: Defenders states that NMFS must include updated best available science regarding marine mammal noise criteria NMFS, citing Southall *et al.,* 2019 as recommending separation of baleen whale hearing groups into multiple categories for the purpose of assessing likely noise impacts. The commenter further asserts that consideration of Southall *et al.,* 2019 would require NMFS to reevaluate the shut down zone sizes, especially for baleen whales.

Response: Thus far, no new information has been published or otherwise conveyed that would fundamentally change the assessment of impacts or conclusions of this IHA regarding current weighting functions and permanent threshold shift (PTS) and temporary threshold shift (TTS) thresholds and therefore calculated isopleths. Furthermore, the recent peer-reviewed updated marine mammal noise exposure criteria by Southall *et al.* (2019) provide identical PTS and TTS thresholds to those provided in NMFS' Acoustic Technical Guidance. NMFS acknowledges Southall *et al.* (2019)'s discussion of potential revised organization for hearing groups. However, the authors do not provide any new weighting functions or thresholds. Therefore, there is no new information available that would change the calculated shutdown zones for any marine mammals, including mysticetes. NMFS' Revised Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2018) (Acoustic Technical Guidance), which was used in the assessment of effects for this IHA, compiled, interpreted, and synthesized the best available scientific information for noise-induced hearing effects for marine mammals to derive updated thresholds for assessing the impacts of noise on marine mammal hearing, including the articles that Defenders referenced that were published subsequent to the publication of the first version of the Acoustic Technical Guidance in 2016. The new data included in those articles are consistent with the thresholds and weighting functions included in the current version of the Acoustic Technical Guidance (NMFS, 2018). NMFS will continue to review and evaluate new relevant data as it becomes available and consider the impacts of those studies on the Acoustic Technical Guidance to determine what revisions/updates may be appropriate.

Comment: Defenders states that NMFS should assess the available sound propagation reduction technologies and that it is unclear from the proposal what the range of available technologies and strategies is to mitigate noise and other project impacts—*i.e.,* to effect the least practicable impacts on marine mammals. Defenders also states that NMFS must address the technologies and approaches available to minimize project impacts on marine mammals and state how it is ensuring that those impacts are minimized, specifically expressing an interest in bubble curtains.

Response: NMFS has assessed the available sound propagation reduction technologies, as recommended by the commenter. However, as discussed in greater detail in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the notice of proposed IHA, and in the Negligible Impact Analysis and Determination section of this notice, only temporary, minor impacts on individual marine mammals are anticipated. Therefore, NMFS has determined that the expected effects of the action do not warrant the significant

additional expense associated with a requirement to use, for example, bubble curtains. The use of bubble curtains is also likely to extend the overall duration of the project. As a result, while the use of bubble curtains may reduce the intensity of a given take event on an individual, it may result in increased take events overall and in a longer duration of effect to marine mammal habitat in general.

Comment: Defenders states that if the first phase of this project is satisfactorily completed with the inclusion of the recommended mitigations and corrections and minimal Level B harassment take of marine mammals, Defenders supports the City receiving renewal for the continuation of the dock construction.

Response: NMFS appreciates Defenders feedback on a possible renewal in the future for this work.

Changes From the Proposed IHA to Final IHA

For the purposes of our ESA Section 7 consultation, NMFS made a slight change in the way we describe the number of ESA-listed Mexico Distinct Population Segment (DPS) humpback whales and the Western DPS (WDPS) Steller sea lions in the Estimated Take section. This does not change our authorized number of total estimated take of humpback whales (880 humpback whales) from the Central North Pacific stock or the total estimated take of Steller sea lions (550). For the Mexico DPS of humpback whales, there was a slight error in the proportion used (0.0601) in the proposed IHA, now changed in this final IHA (0.061), multiplied by the total estimated take (880 humpback whales) increased the probable take of Mexico DPS from 53 to 54 whales. Again, this is used to describe how many ESA-listed species would likely be taken for ESA Section 7 consultation purposes, and does not change the total take estimate authorized for this IHA for the Central North Pacific stock of humpback whales. For Steller sea lions, NMFS is now using an updated estimate from Hastings *et al.* 2020 to describe the proportion of Western DPS Steller sea lions that may be found in the area. In the proposed IHA, NMFS assumed 39 sea lions would be anticipated from the Western DPS (0.0702 proportion of the total animals (L. Jemison draft unpublished Steller sea lion data, 2019) and taken by Level B harassment. In this final IHA, NMFS assumes that the percentage of Steller sea lions which may be found in the action area from the WDPS is now estimated at 0.014 proportion of the total animals (Hastings *et al.* 2020). Therefore, NMFS expects that 8 individual WDPS Steller sea lions may be exposed to Level B harassment ($550 \times 0.014 = 7.7$ (rounded up to 8)). Because there are now fewer WDPS Steller sea lions estimated to be taken for Level B harassment, this slightly increased the proportion of Eastern DPS Steller sea lions that would likely be taken from 511 to 542 sea lions. These revised numbers do not change the authorized total estimated take (550) of Steller sea lions through the IHA.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports)* and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in the project area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). 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 mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs (Carretta *et al.,* 2020; Muto *et al.,* 2020). All MMPA stock information presented in Table 2 is the most recent available at the time of publication and is available in the 2019 SARs (Caretta *et al.,* 2020; Muto *et al.,* 2020) and draft 2020 SARs (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMAL OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	131
Family Balaenopteridae (rorquals):						
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	UND	0
Humpback Whale	*Megaptera novaeangliae*	Central N Pacific (Hawaii and Mexico DPS)	-, -, Y	10,103 (0.3, 7,891, 2006)	83	26

TABLE 2—MARINE MAMMAL OCCURRENCE IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Alaska Resident	-, -, N	2,347 (N/A, 2347, 2012)	24	1
		Northern Resident	-, -, N	302 (N/A, 302, 2018)	2.2	0.2
		West Coast Transient	-, -, N	349 (na/349; 2018)	3.5	0.4
Pacific White-Sided Dolphin	*Lagenorhynchus obliquidens*	N Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	AK	-, -, N	83,400 (0.097, N/A, 1991).	UND	38
Harbor Porpoise	*Phocoena phocoena*	Southeast Alaska	-, -, Y	see SAR (see SAR, see SAR, 2012).	see SAR	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	*Eumetopias jubatus*	Western DPS	E, D, Y	52,932 (see SAR, 52,932, 2019).	318	255
		Eastern DPS	T, D, Y	43,201 a (see SAR, 43,201, 2017).	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Glacier Bay/Icy Strait	-, -, N	7,455 (see SAR, 6,680, 2017).	120	104

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[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. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

A detailed description of the of the species likely to be affected by the City's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (86 FR 12630; March 4, 2020) since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving as well as DTH. The effects of underwater noise from the City's planned activities have the potential to result in Level A and B harassment of marine mammals in the vicinity of the action area. The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. With both types, it is likely that the pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. The **Federal Register** notice for the proposed IHA (86 FR 12630; March 4, 2020) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to the **Federal Register** notice (86 FR 12630; March 4, 2020).

Anticipated Effects on Marine Mammal Habitat

The main impact issue associated with the planned activity would be temporarily elevated sound levels and the associated direct effects on marine mammals. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near where the piles are installed. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (84 FR 18495; May 1, 2019), therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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).

Take of marine mammals incidental to the City's pile driving and removal activities (as well as during DTH) could occur as a result of Level A and Level B harassment. Below we describe how the potential take is estimated. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the planned take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB reference pressure 1 μPascal (re 1 μPa) root-mean-square (rms) for continuous (*e.g.,* vibratory pile driving) and above 160 dB re 1 μPa (rms) for intermittent sources (*e.g.,* impact pile driving). The City's planned activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable. DTH noise is considered to produce noise with both impulsive and continuous characteristics. Therefore, DTH is considered to be a continuous noise source for purposes of evaluating potential Level B harassment, resulting in a conservative approach to the analysis.

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. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.,* impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.,* sound pressure level (peak SPL) and sound exposure level (SEL) (also accounts for duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

These thresholds were developed by compiling and synthesizing the best available science, and are provided in Table 4 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.*

The City's planned activities includes the use of continuous non-impulsive (vibratory pile driving) and impulsive (impact pile driving) sources. DTH pile installation includes drilling (non-impulsive sound) and hammering (impulsive sound) to penetrate rocky substrates (Denes *et al.* 2016; Denes *et al.* 2019; Reyff and Heyvaert 2019). DTH pile installation was initially thought be a primarily non-impulsive noise source. However, Denes *et al.* (2019) concluded from a study conducted in Virginia, nearby the location for this project, that DTH should be characterized as impulsive based on Southall *et al.* (2007), who stated that signals with a >3 dB difference in sound pressure level in a 0.035-second window compared to a 1-second window can be considered impulsive. Therefore, DTH pile installation is treated as both an impulsive and non-impulsive noise source. In order to evaluate Level A harassment, DTH pile installation activities are evaluated according to the impulsive criteria. Overall, the approach to analysis of the DTH installation technique ensures that the largest ranges to effect for both Level A and Level B harassment are accounted for in the take estimation process.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

(Auditory Injury)

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.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

(Auditory Injury)

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
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 cumulative sound exposure level (L_E) has a reference value of 1µPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute 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 cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (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:

$TL = B * \log_{10}(R_1/R_2)$,

where

B = transmission loss coefficient (assumed to be 15)

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.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are source level measurements available for certain pile types and sizes from the similar environments recorded from underwater pile driving projects in Alaska (*e.g.,* JASCO Reports—Denes *et al.,* 2016 and Austin *et al.,* 2016) that were evaluated and used as proxy sound source levels to determine reasonable sound source levels likely result from the City's pile driving and removal activities (Table 5). Many source levels used were more conservative as the values were from larger pile sizes.

TABLE 5—ASSUMED SOUND SOURCE LEVELS

Activity	Sound source level at 10 meters	Sound source
Vibratory Pile Driving/Removal		
20-inch fender pile permanent	161.9 SPL	The 20-in fender and 30-inch-diameter source level for vibratory driving are proxy from median measured source levels from pile driving of 30-inch-diameter piles to construct the Ketchikan Ferry Terminal (Denes *et al.* 2016, Table 72).
30-inch steel pile temporary installation	161.9 SPL	
30-inch steel pile removal	161.9 SPL	
36-inch steel pile permanent	168.2 SPL	The 36-inch-diameter pile source level is proxy from median measured source levels from pile driving of 48-inch diameter piles for the Port of Anchorage test pile project (Austin *et al.* 2016, Table 16).
H-pile installation permanent	168 SPL	The H-pile source level is proxy from median measured source levels from vibratory pile driving of H piles for the Port of Anchorage test pile project (Yurk *et al.* 2015 as cited in Denes *et al.* 2016, Appendix H Table 2).

TABLE 5—ASSUMED SOUND SOURCE LEVELS—Continued

Activity	Sound source level at 10 meters	Sound source
Sheet pile installation	160 SPL	The sheet source level is proxy from median measured source levels from vibratory pile driving of 24-inch sheets for Berth 30 at the Port of Oakland, CA (Buehler *et al.* 2015; Table I.6–2).
Impact Pile Driving		
36-inch steel pile permanent	186.7 SEL/198.6 SPL	The 36-inch diameter pile source level is a proxy from median measured source level from impact hammering of 48-inch piles for the Port of Anchorage test pile project (Austin *et al.,* 2016, Tables 9 and 16).
20-inch fender pile installation permeant	161 SEL/174.8 SPL	The 20-inch diameter pile source levels are proxy from median measured source levels from vibratory driving of 24-inch piles for the Kodiak Ferry Terminal project (Denes *et al.* 2016)
H-pile installation permanent and Sheet pile installation.	163 SEL/177 SPL	H-Pile and Sheets Impacting source levels are proxy from median measured source levels from pile driving H-piles and sheets for the Port of Anchorage test pile project (Yurk *et al.* 2015 as cited in Denes *et al.* 2016, Appendix H Table 1).
DTH Pile Installation		
36-inch steel pile permanent	164 SEL/166 SPL	The DTH sound source proxy of 164 dB SEL is from 42-in piles, Reyff 2020 and Denes *et al.* 2019; while the 154 dB SEL is based on 24-in piles, Denes *et al.* 2016.
20-inch fender pile installation temporary	154 SEL/166 SPL	
H-pile installation permanent (20-inch hole)	154 SEL/166 SPL	

Level A Harassment

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as from impact and vibratory pile driving and DTH), NMFS User Spreadsheet (2020) predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet (Tables 6 and 7), and the resulting isopleths are reported below (Table 8).

TABLE 6—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR VIBRATORY PILE DRIVING

User spreadsheet input—vibratory pile driving spreadsheet tab A.1 vibratory pile driving used.						
	30-in piles (temporary install)	30-in piles (temporary removal)	20-in fender piles (permanent)	36-in piles (permanent)	H-piles (permanent)	Sheet piles (permanent)
Source Level (RMS SPL)	161.9	161.9	161.9	168.2	168	160
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	2.5	2.5	2.5
Number of piles within 24-hr period	4	4	4	4	4	30
Duration to drive a single pile (min)	15	15	15	15	15	15
Propagation (xLogR)	15	15	15	15	15	15
Distance of source level measurement (meters)+	10	10	10	10	11	10

TABLE 7—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR IMPACT PILE DRIVING

User Spreadsheet Input—Impact pile driving spreadsheet tab E.1 impact pile driving used.							
	36-in piles (permanent)	36-in pile (DTH)	20-in fender piles (permanent)	20-in fender pile (DTH)	H-pile (permanent)	H-pile (DTH)	Sheet piles (permanent)
Source Level (Single Strike/shot SEL)	186.7	164	161	154	163	154	163
Weighting Factor Adjustment (kHz)	2	2	2	2	2	2	2
Number of strikes per pile	100	.....	35	.....	35	.....	35
Strike rate (avg. strikes per second)	.....	15	.....	15	.....	15	.....
Number of piles per day	2	2	2	2	5	2	5
Propagation (xLogR)	15	15	15	15	15	15	15
Distance of source level measurement (meters)+	10	10	10	10	15	10	15

TABLE 8—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS

User spreadsheet output		PTS isopleths (meters)				
		Level A harassment				
Activity	Sound source level at 10 m	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal						
20-in steel fender pile installation	161.9 SPL	7.8	0.7	11.6	4.8	0.3
30-in steel pile temporary installation	161.9 SPL	7.8	0.7	11.6	4.8	0.3
30-in steel pile removal	161.9 SPL	7.8	0.7	11.6	4.8	0.3
36-in steel permanent installation	168.2 SPL	20.6	1.8	30.5	12.5	0.9
H-pile installation	168 SPL	22.0	2.0	32.5	13.4	0.9
Sheet pile installation	160 SPL	22.4	2.0	33.2	13.6	1.0
Impact Pile Driving						
36-in steel permanent installation	186.7 SEL/198.6 SPL	602.7	21.4	717.9	322.5	23.5
20-in fender pile installation	161 SEL/174.8 SPL	5.8	0.2	6.9	3.1	0.21
H-pile installation	163 SEL/177 SPL	21.8	0.8	25.9	11.6	0.8
Sheet pile installation	163 SEL/177 SPL	21.8	0.8	25.9	11.6	0.8
DTH						
36-in steel permanent installation	164 SEL/166 SPL	1,225.6	43.6	1,459.9	655.9	47.8
20-in steel fender pile installation	154 SEL/166 SPL	264.1	9.4	314.5	141.3	10.3
H-pile installation	154 SEL/166 SPL	264.1	9.4	314.5	141.3	10.3

Level B Harassment

Utilizing the practical spreading loss model, the City determined underwater noise will fall below the behavioral effects threshold of 120 dB rms for marine mammals at the distances shown in Table 9 for vibratory pile driving/removal, and DTH. With these radial distances, and due to the occurrence of landforms (See Figure 5 and 8 of the IHA Application), the largest Level B harassment zone calculated for vibratory pile driving for 36-in steel piles and H-piles were larger than the 15,700 meters (m) from the source where land masses block sound transmission. For DTH, the largest radial distance was 11,659 m. For calculating the Level B harassment zone for impact driving, the practical spreading loss model was used with a behavioral threshold of 160 dB rms. The maximum radial distance of the Level B harassment zone for impact piling equaled 3,744 m for 36-in piles m. Table 9 below provides all Level B harassment radial distances (m) during the City's planned activities.

TABLE 9—RADIAL DISTANCES (METERS) TO RELEVANT BEHAVIORAL ISOPLETHS

Activity	Received level at 10 meters	Level B harassment zone (m) *
Vibratory Pile Driving/Removal		
20-inch steel fender pile installation	161.9 SPL	6,215 (calculated 6,213).
30-inch steel temporary installation	161.9 SPL	6,215 (calculated 6,213).
30-inch steel removal	161.9 SPL	6,215 (calculated 6,213).
36-inch steel permanent installation	168.2 SPL	15,700 [a] (calculated 16,343).
H-pile installation	168 SPL	15,700 [a] (calculated 17,434).
Sheet pile installation	160 SPL	4,645 (calculated 4,642).
Impact Pile Driving		
20-inch fender pile installation	161 SEL/174.8 SPL	100 (calculated 97).
36-inch steel permanent installation	186.7 SEL/198.6 SPL	3,745 (calculated 3,744).
H-pile and Sheet pile installation	163 SEL/177 SPL	205 (calculated 204).
DTH		
20-inch steel fender pile installation	166 SPL	11,660 (calculated 11,659).
36-inch steel temporary installation	166 SPL	11,660 (calculated 11,659).
H-pile installation	166 SPL	11,660 (calculated 11,659).

* Numbers rounded up to nearest 5 meters. These specific rounded distances are for monitoring purposes rather than take estimation.

[a] Although the calculated distance to Level B harassment thresholds extends these distances, all Level B harassment zones are truncated at 15,700m from the source where land masses block sound transmission.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact pile driving, vibratory pile driving/removal and DTH noises for each acoustic threshold were estimated using group size estimates and local observational data. As previously stated, take by Level B harassment as well as small numbers of take by Level A harassment will be considered for this action. Take by Level B and Level A harassment are calculated differently for some species based on monthly or daily sightings data and average group sizes within the action area using the best available data. Take by Level A harassment is being authorized for three species (Dall's and harbor porpoise and harbor seal) where the Level A harassment isopleths are larger for pile driving of 36-in steel piles and DTH of 36-in piles, and is based on average group size multiplied by the number of days of impact pile driving for 36-in piles and DTH of 36-in piles. Distances to Level A harassment thresholds for other project activities (vibratory pile driving/removal, DTH and impact driving of smaller pile sizes) are considerably smaller compared to impact pile driving of 36-in piles and DTH for 36-in piles, and mitigation is expected to avoid Level A harassment from these other activities.

Minke Whales

There are no density estimates of minke whales available in the project area. These whales are usually sighted individually or in small groups of two or three, but there are reports of loose aggregations of hundreds of animals (NMFS 2018). One minke whale was sighted each year during the Hoonah cruise ship Berth I project (June 2015–January 2016; BergerABAM 2016) and during the Hoonah Berth II project (June 2019–October 2019; SolsticeAK 2020).To be conservative based on group size, we predict that three minke whales in a group could be sighted each month over the 4-month project period for a total of 12 minke whale takes authorized by Level B harassment. No take by Level A harassment is authorized or anticipated to occur due to their rarer occurrence in the project area.

Humpback Whales

There are no density estimates of humpback whales available in the project area. During the previous Hoonah Berth I project, humpback whales were observed on 84 of the 135 days of monitoring; most often in September and October (BergerABAM 2016). Additionally, during construction of the Hoonah Berth II project in 2019, humpback whales were observed in the action area on 45 of the 51 days of monitoring; most often in July and September. Up to 24 humpback sightings were reported on a single day (July 30, 2019), and a total of 108 observations were recorded in harassment zones during project construction (SolsticeAK 2020).

Based on a group size of eight animals, the general maximum group size observed in Southeast Alaska in all months of the year, NMFS estimates that 8 humpback whales could occur for each day of the project (110 days) for a total of 880 takes by Level B harassment. Under the MMPA, humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for DPSs listed under the ESA. Using the stock assessment from Muto *et al.* 2020 for the Central North Pacific stock (10,103 whales) and calculations in Wade *et al.* 2016; 9,487 whales are expected to be from the Hawaii DPS and 606 from the Mexico DPS. Therefore, for purposes of consultation under the ESA, we anticipate that 54 of the total takes would be of individuals from the Mexico DPS ($880 \times 0.061 = 53.68$ (rounded up to 54). No take by Level A harassment is authorized or anticipated to occur due to their large size and ability to be visibly detected in the project area if an animal should approach the Level A harassment zone.

Gray Whales

There are no density estimates of gray whales available in the project area. Gray whales travel alone or in small, unstable groups, although large aggregations may be seen in feeding and breeding grounds (NMFS 2018e). Observations in Glacier Bay and nearby waters recorded two gray whales documented over a 10-year period (Keller *et al.,* 2017). None were observed during Hoonah Berth I or II project monitoring (BergerABAM 2016, SolsticeAK 2020). We estimate a one gray whale x onesighting per month over the 4-month work period for a total of four gray whale takes authorized by Level B harassment. No take by Level A harassment is authorized or anticipated to occur due to their rarer occurrence in the project area, but also their large size and ability to be visibly detected in the project area if an animal should approach the Level A harassment zone.

Killer Whales

There are no density estimates of killer whales available in the project area. Killer whales occur commonly in the waters of the project area, and could include members of several designated stocks that may occur in the vicinity of the project area. Whales are known to use the Icy Strait corridor to enter and exit inland waters and are observed in every month of the year, with certain pods being observed inside Port Frederick passing directly in front of Hoonah. Group size of resident killer whale pods in the Icy Strait area ranges from 42 to 79 and occur in every month of the year (Dahlheim pers. comm. to NMFS 2015). As determined during a line-transect survey by Dalheim *et al.* (2008), the greatest number of transient killer whale observed occurred in 1993 with 32 animals seen over 2 months for an average of 16 sightings per month. Killer whales were observed infrequently during construction of Hoonah Berth I project. Usually a singular animal was observed, but a group containing eight individuals was seen in the project area on one occasion. A total of 24 animals were observed during in-water work for the Hoonah Bert I project (BergerABAM 2016). During construction of the Hoonah Berth II project, killer whales were observed on 8 days. Usually a single animal or pairs were observed, but a group containing five individuals was seen in the project area on one occasion. A total of 20 animals were observed during in-water work on Hoonah Berth II project (SolsticeAK 2020). Using the largest group size for resident killer whales as discussed above, NMFS estimates that 79 killer whales (residents and transients) could occur each month during the 4-month project period for a total of 316 takes by Level B harassment. No take by Level A harassment is authorized or anticipated to occur to the ability to visibly detect these large whales and in most cases the small size of the Level A harassment zones.

Pacific White-Sided Dolphin

There are no density estimates of Pacific white-sided dolphins available in the project area. Pacific white-sided dolphins have been observed in Alaska waters in groups ranging from 20 to 164 animals, with the sighting of 164 animals occurring in Southeast Alaska near Dixon Entrance (Muto *et al.,* 2018). There were no Pacific white-sided dolphins observed during the 135-day monitoring period during the Hoonah Berth I project; however, a pod of two Pacific white-sided dolphins was

observed during construction of the Hoonah Bert II project (SolsticeAK 2020). Using the largest group size for Pacific white-sided dolphins as discussed above, NMFS estimates 164 Pacific white-sided dolphins may be seen every other month over the 4-month project period for a total of 328 takes by Level B harassment. No take by Level A harassment is authorized or anticipated to occur as the largest Level A harassment isopleths calculated were 43.6 m during DTH of 36-in piles and 21.4 m during impact pile driving of 36-in piles. The remaining isopleths were all under 10 m.

Dall's Porpoise

Little information is available on the abundance of Dall's porpoise in the inland waters of Southeast Alaska. Dall's porpoise are most abundant in spring, observed with lower numbers in the summer, and lowest numbers in fall. Jefferson *et al.,* 2019 presents abundance estimates for Dall's porpoise in these waters and found the abundance (N) in summer (N = 2,680, CV = 19.6 percent), and lowest in fall (N = 1,637, CV = 23.3 percent). Dall's porpoise are common in Icy Strait and sporadic with very low densities in Port Frederick (Jefferson *et al.,* 2019). Dahlheim *et al.* (2008) observed 346 Dall's porpoise in Southeast Alaska (inclusive of Icy Strait) during the summer (June/July) of 2007 for an average of 173 animals per month as part of a 17-year study period. During the previous Hoonah Berth I project, only two Dall's porpoise were observed, and were transiting within the waters of Port Frederick in the vicinity of Halibut Island. A total of 21 Dall's porpoises were observed on eight days during the Hoonah Berth II project in group sizes of 2 to 12 porpoise (SolsticeAK 2020).Therefore, NMFS' estimates 12 Dall's porpoise a week may be seen during the 4-month project period for a total of 192 takes by Level B harassment. Because the calculated Level A harassment isopleths are larger for high-frequency cetaceans during DTH of 36-inch piles (1,459.9 m) and 36-in impact pile driving (717.9 m) and the applicant would have a reduced shutdown zone at 200 m, NMFS predicts that some take by Level A harassment may occur. It is estimated that two Dall's porpoise could be taken by Level A harassment every 5 days over a 20-day period (15 days of DTH of 36-in piles + 5 days of 36-in impact pile driving) for a total of 8 takes by Level A harassment.

Harbor Porpoise

Dahlheim *et al.* (2015) observed 332 resident harbor porpoises occur in the Icy Strait area, and harbor porpoise are known to use the Port Frederick area as part of their core range. During the Hoonah Berth I project monitoring, a total of 32 harbor porpoise were observed over 19 days during the 4-month project. The harbor porpoises were observed in small groups with the largest group size reported was four individuals and most group sizes consisting of three or fewer animals. During the test pile program conducted at the Berth II project site in May 2018, eight harbor porpoises where observed over a 7-hour period (SolsticeAK 2018). During the Hoonah Berth II project, 120 harbor porpoises were observed June through October. The largest group size reported was eight individuals, and most group sizes consisting of four or fewer animals (SolsticeAK 2020). NMFS estimates that four harbor porpoises per day could occur in the project area over the 4-month project period (110 days) for a total of 440 takes by Level B harassment. Because the calculated Level A harassment isopleths are larger for high-frequency cetaceans during DTH of 36-inch piles (1,459.9 m) and 36-in impact pile driving (717.9 m) and the applicant would have a reduced shutdown zone at 200 m, NMFS predicts that some take by Level A harassment may occur. It is estimated that four harbor porpoise could be taken by Level A harassment every 5 days over a 20-day period (15 days of DTH of 36-in piles + 5 days of 36-in impact pile driving) for a total of 16 takes by Level A harassment.

Harbor Seal

There are no density estimates of harbor seals available in the project area. Keller *et al.* (2017) observed an average of 26 harbor seal sightings each month between June and August of 2014 in Glacier Bay and Icy Strait. During the monitoring of the Hoonah Berth I project, harbor seals typically occur in groups of one to four animals and a total of 63 seals were observed during 19 days of the 135-day monitoring period. In 2019, a total of 33 harbor seals were seen during the Hoonah Berth II project. Only solo individuals were sighted during that time (SolsticeAK 2020). NMFS estimates that three harbor seals per group, and two groups a day, could occur in the project area each month during the 4-month project period (110 days) for a total of 660 takes by Level B harassment. Because the calculated Level A harassment isopleths are larger for phocids during DTH of 36-inch piles (655.9 m) and 36-in impact pile driving (322.5 m), compared with the shutdown zone at 200 m, NMFS predicts that some take by Level A harassment may occur. It is estimated that one group of three harbor seals a day could be taken by Level A harassment over a 20-day period (15 days of DTH of 36-in piles + 5 days of 36-in impact pile driving) for a total of 60 takes by Level A harassment.

Steller Sea Lion

There are no density estimates of Steller sea lions available in the project area. NMFS expects that Steller sea lion presence in the action area will vary due to prey resources and the spatial distribution of breeding versus non-breeding season. In April and May, Steller sea lions are likely feeding on herring spawn in the action area. Then, most Steller sea lions likely move to the rookeries along the outside coast (away from the action area) during breeding season, and would be in the action area in greater numbers in August and later months (J. Womble, NPS, pers. comm. to NMFS AK Regional Office, March 2019). However, Steller sea lions are also opportunistic predators and their presence can be hard to predict.

Steller sea lions typically occur in groups of 1–10 animals, but may congregate in larger groups near rookeries and haulouts. The previous Hoonah Berth I project observed a total of 180 Steller sea lion sightings over 135 days in 2015, amounting to an average of 1.3 sightings per day (BergerABAM 2016). During a test pile program performed at the project location by the Hoonah Cruise Ship Dock Company in May 2018, a total of 15 Steller sea lions were seen over the course of 7 hours in one day (SolsticeAK 2018). During construction of the Hoonah Berth II project, a total of 197 Steller sea lion sightings over 42 days were reported, amounting to an average of 4.6 sightings per day (SolsticeAK 2020). NMFS estimates that five Steller sea lions per day could occur in the project area each month during the 4-month project period (110 days) for a total of 550 takes by Level B harassment. NMFS expects that the percentage of Steller sea lions which may be found in the action area from the WDPS is estimated at 1.4 percent (Hastings *et al.* 2020). Therefore, NMFS expects that 8 individual WDPS Steller sea lions may be exposed to Level B harassment ($550 \times 0.014 = 7.7$ (rounded up to 8)). There is some evidence of Steller sea lions remaining in areas where there is a reliable food source. Should a Steller sea lion go undetected by a Protected Species Observer (PSO) and later observed within the Level A harassment zone, the City proposes mitigation measures (*e.g.,* shutdowns), and it would be unlikely that an animal would accumulate

enough exposure for PTS to occur. Therefore, no take by Level A harassment is authorized or anticipated to occur as the largest Level A isopleths calculated were 47.8 m during DTH of 36-in piles and 23.5 m during impact pile driving of 36-in piles. The remaining isopleths were approximately 10 m or less.

Table 10 below summarizes the authorized take for all the species described above as a percentage of stock abundance.

TABLE 10—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (N_{EST})	Level A harassment	Level B harassment	Percent of stock
Minke Whale	N/A	0	12	N/A.
Humpback Whale	Central North Pacific	0	880	8.7.
Gray Whale	Eastern North Pacific (27,000)	0	4	Less than 1 percent.
Killer Whale	Alaska Resident (2,347)	0	256	10.9 [a]
	Northern Resident (302)		33	10.9 [a]
	West Coast Transient (243)		27	11.1.[a]
			(Total 316)	
Pacific White-Sided Dolphin	North Pacific (26,880)	0	328	Less than 1 percent.
Dall's Porpoise	Alaska (83,400) [b]	8	144	Less than 1 percent.
Harbor Porpoise	NA	16	440	NA.
Harbor Seal	Glacier Bay/Icy Strait (7,455)	60	660	8.9.
Steller Sea Lion	Eastern U.S. (43,201)	0	542	1.26
	Western U.S. (53,624)		8	Less than 1 percent.
			(Total 550)	

[a] Take estimates are weighted based on calculated percentages of population for each distinct stock, assuming animals present would follow same probability of presence in project area.

[b] Jefferson *et al.* 2019 presents the first abundance estimates for Dall's porpoise in the waters of Southeast Alaska with highest abundance recorded in spring (N = 5,381, CV = 25.4 percent), lower numbers in summer (N = 2,680, CV = 19.6 percent), and lowest in fall (N = 1,637, CV = 23.3 percent). However, NMFS currently recognizes a single stock of Dall's porpoise in Alaskan waters and an estimate of 83,400 Dall's porpoises is used by NMFS for the entire stock (Muto *et al.,* 2020).

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 such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such 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 such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

General

The City will follow mitigation procedures as outlined in their Marine Mammal Monitoring Plan and as described below. In general, if poor environmental conditions restrict visibility full visibility of the shutdown zone, pile driving installation and removal as well as DTH will be delayed.

Training

The City must ensure that construction supervisors and crews, the monitoring team, and relevant City staff are trained prior to the start of construction activity subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work

Avoiding Direct Physical Interaction

The City must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

Shutdown Zones

For all pile driving/removal and DTH activities, the City will establish a shutdown zone for a marine mammal species that is greater than its corresponding Level A harassment zone; except for a few circumstances during impact pile driving and DTH, where the shutdown zone is smaller (reduced to 200 m) than the Level A harassment zone for high frequency cetaceans and phocids due to the practicability of shutdowns on the applicant and to the potential difficulty of observing these animals in the larger Level A harassment zones. The calculated PTS isopleths were rounded up to a whole number to determine the actual shutdown zones that the applicant will operate under (Table 11). The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon

sighting of a marine mammal (or in anticipation of an animal entering the defined area).

TABLE 11—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Pile size, type, and method	Shutdown Zones				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal					
20-in steel fender pile installation	10	10	15	10	10
30-in steel pile temporary installation	10	10	15	10	10
30-in steel pile removal	10	10	15	10	10
36-in steel permanent installation	25	10	35	15	10
H-pile installation	35	10	35	15	10
Sheet pile installation	25	10	35	15	10
Impact Pile Driving					
36-in steel permanent installation	625	25	200*	200*	25
20-in fender pile installation	10	10	10	10	10
H-pile installation	25	10	30	15	10
Sheet pile installation	25	10	30	15	10
DTH					
36-in steel permanent installation	1,230	45	200*	200*	50
20-in steel fender pile installation	265	10	200*	145	15
H-pile installation	265	10	200*	145	15

*Due to practicability of the applicant to shutdown and the difficulty of observing some species and low occurrence of some species in the project area, such as high frequency cetaceans or pinnipeds out to this distance, the shutdown zones were reduced and Level A harassment takes were requested during DTH and for impact pile driving of 36-in piles.

Soft Start

The City must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. Then two subsequent reduced-energy strike sets would occur. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Vessels

Vessels will adhere to the Alaska Humpback Whale Approach Regulations when transiting for project activities (see 50 CFR 216.18, 223.214, and 224.103(b)). These regulations require that all vessels:

- Not approach within 91.44 m (100 yards (yd)) of a humpback whale, or cause a vessel or other object to approach within 91.44 m (100 yd) of a humpback whale;
- Not place vessel in the path of oncoming humpback whales causing them to surface within 91.44 m (100 yd) of vessel;
- Not disrupt the normal behavior or prior activity of a whale; and
- Operate at a slow, safe speed when near a humpback whale (safe speed is defined in regulation (see 33 CFR 83.06)).

Based on our evaluation of the applicant's planned measures, NMFS has determined that the planned 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.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. 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 action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species,

acoustic habitat, or other important physical components of marine mammal habitat).

- Mitigation and monitoring effectiveness.

Monitoring Zones

The City will establish and observe monitoring zones for Level B harassment as presented in Table 9. The monitoring zones for this project are areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving/removal and DTH) and 160 dB rms (for impact pile driving). These zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the Level B harassment zones enables observers to be aware of and communicate the presence of marine mammals in the project area, but outside the shutdown zone, and thus prepare for potential shutdowns of activity.

Pre-Start Clearance Monitoring

Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving and DTH may commence when the determination is made.

Visual Monitoring

Monitoring must take place from 30 minutes (min) prior to initiation of pile driving and DTH activity (*i.e.,* pre-start clearance monitoring) through 30 min post-completion of pile driving and DTH activity. If a marine mammal is observed entering or within the shutdown zones, pile driving and DTH activity must be delayed or halted. If pile driving or DTH 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 min have passed without re-detection of the animal. Pile driving and DTH activity must be halted upon observation of either 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.

PSO Monitoring Locations and Requirements

The City will establish monitoring locations as described in the Marine Mammal Monitoring Plan. The City will monitor the project area to the extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. Monitoring will be conducted by PSOs from on land and from a vessel. For all pile driving and DTH activities, a minimum of one observer must be assigned to each active pile driving and DTH location to monitor the shutdown zones. Three PSOs must be onsite during all in-water activities as follows: PSO 1 stationed at the pile site on the existing City Dock, PSO 2 stationed on Halibut Island facing south and PSO 3 stationed on a vessel running a transect through southern portion of the project area in Port Frederick. These observers must record all observations of marine mammals, regardless of distance from the pile being driven or during DTH.

In addition, PSOs will work in shifts lasting no longer than 4 hrs with at least a 1-hr break between shifts, and will not perform duties as a PSO for more than 12 hrs in a 24-hr period (to reduce PSO fatigue).

Monitoring of pile driving will be conducted by qualified, NMFS-approved PSOs. The City shall adhere to the following conditions when selecting PSOs:

- PSOs must be independent (*i.e.,* not construction personnel) 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 activities 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.
- Where a team of three PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
- PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

The City will ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the 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 not implemented when required); and marine mammal behavior;
- 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; and
- Sufficient training, orientation, or experience with the construction operations to provide for personal safety during observations.

Notification of Intent To Commence Construction

The City will inform NMFS OPR and the NMFS Alaska Region Protected Resources Division one week prior to commencing construction activities.

Interim Monthly Reports

During construction, the City will submit brief, monthly reports to the NMFS Alaska Region Protected Resources Division that summarize PSO observations and recorded takes. Monthly reporting will allow NMFS to track the amount of take (including any extrapolated takes), to allow reinitiation of consultation in a timely manner, if necessary. The monthly reports will be submitted by email to *akr.section7@nooa.gov.* The reporting period for each monthly PSO report will be the entire calendar month, and reports will be submitted by close of business on the 10th day of the month following the end of the reporting period.

Final Report

The City will submit a draft report on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report shall be considered

final. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Egger@noaa.gov.* The report must contain the informational elements described in the Marine Mammal Monitoring Plan and, at minimum, must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including:

(i) How many and what type of piles were driven and by what method (*e.g.,* impact, vibratory, DTH);

(ii) Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving); and

(iii) For DTH, duration of operation for both impulsive and non-pulse components.

- 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:

(i) PSO who sighted the animal and PSO location and activity at time of sighting;

(ii) Time of sighting;

(iii) Identification of the animal (*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;

(iv) Distance and bearing of each marine mammal observed to the pile being driven for each sighting (if pile driving and DTH was occurring at time of sighting);

(v) Estimated number of animals (min/max/best);

(vi) Estimated number of animals by cohort (adults, juveniles, neonates, group composition etc.; Animal's closest point of approach and estimated time spent within the harassment zone.

(vii) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- 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, if any; and
- All PSO datasheets and/or raw sightings data.

Reporting of Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the City will report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), NMFS (301–427–8401) and to the Alaska regional stranding network (877–925–7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the City will immediately cease the specified 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 this IHA. The City will 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 responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As stated in the mitigation section, shutdown zones that are larger than the Level A harassment zones will be implemented in the majority of construction days, which, in combination with the fact that the zones are so small to begin with, is expected to avoid the likelihood of Level A harassment for six of the nine species. For the other three species (harbor seals, Dall's and harbor porpoises), a small amount of Level A harassment has been conservatively authorized because the Level A harassment zones are larger than the planned shutdown zones during impact pile driving of 36-in piles and during DTH. However, we expect, given the nature of the activities and sound source and the unlikelihood that animals would stay in the vicinity of the pile-driving for long, any PTS incurred would be expected to be of a low degree and unlikely to have any effects on individual fitness.

Exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. 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; 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. These reactions and behavioral changes are expected to subside quickly when the exposures cease.

To minimize noise during pile driving, the City will use pile caps (pile softening material). Much of the noise generated during pile installation comes

from contact between the pile being driven and the steel template used to hold the pile in place. The contractor will use high-density polyethylene or ultra-high-molecular-weight polyethylene softening material on all templates to eliminate steel on steel noise generation.

During all impact driving, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reducing the possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. In addition, PSOs will be stationed within the action area whenever pile driving/removal and DTH activities are underway. Depending on the activity, the City will employ the use of three PSOs to ensure all monitoring and shutdown zones are properly observed.

The HMIC Cargo Dock would likely not impact any marine mammal habitat since its location is within an area that is currently used by large shipping vessels and in between two existing, heavily-traveled docks, and within an active marine commercial and tourist area. There are no known pinniped haulouts or other biologically important areas for marine mammals near the action area. In addition, impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available habitat around Hoonah. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During pile driving/removal and DTH activities, it is expected that fish and marine mammals would temporarily move to nearby locations and return to the area following cessation of in-water construction activities. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Minimal impacts to marine mammal habitat/prey are expected;
- The action area is located and within an active marine commercial and tourist area;
- There are no rookeries, or other known areas or features of special significance for foraging or reproduction in the project area;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; and
- The required mitigation measures (*i.e.* shutdown zones) are expected to be effective in reducing the effects of the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Seven of the nine marine mammal stocks authorized for take are approximately 11 percent or less of the stock abundance. There are no official stock abundances for harbor porpoise and minke whales; however, as discussed in greater detail in the Description of Marine Mammals in the Area of Specified Activities, we believe for the abundance information that is available, the estimated takes are likely small percentages of the stock abundance. For harbor porpoise, the abundance for the Southeast Alaska stock is likely more represented by the aerial surveys that were conducted as these surveys had better coverage and were corrected for observer bias. Based on this data, the estimated take could potentially be approximately 4 percent of the stock abundance. However, this is unlikely and the percentage of the stock taken is likely lower as the authorized take estimates are conservative and the project occurs in a small footprint compared to the available habitat in Southeast Alaska. For minke whales, in the northern part of their range they are believed to be migratory and so few minke whales have been seen during three offshore Gulf of Alaska surveys that a population estimate could not be determined. With only twelve authorized takes for this species, the percentage of take in relation to the stock abundance is likely to be very small.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

In September 2020, the Indigenous People's Council for Marine Mammals (IPCoMM), the Alaska Sea Otter and Steller Sea Lion Commission, Huna Totem Corporation, and the Hoonah Indian Association (HIA) were contacted to determine potential project impacts on local subsistence activities. No comments were received from IPCoMM or the Alaska Sea Otter and Steller Sea Lion Commission. On September 14, 2020, Huna Totem Corporation expressed support for the project and indicated that they do not anticipate any marine mammal or subsistence.

The planned project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region because construction activities are localized and temporary; mitigation

measures will be implemented to minimize disturbance of marine mammals in the project area; and the project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from the City's planned activities.

Therefore, we believe there are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. 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 (ESA)

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, in this case with the Alaska Regional Office (AKRO).

NMFS is authorizing take of Mexico DPS humpback whales, and Western DPS Steller sea lions which are listed under the ESA. The Permit and Conservation Division completed a Section 7 consultation with the AKRO for the issuance of this IHA. The AKRO's biological opinion states that the action is not likely to jeopardize the continued existence of Western DPS Steller sea lions or Mexico DPS humpback whales.

Authorization

As a result of these determinations, NMFS authorizes an IHA to the City for conducting for the planned pile driving and removal activities as well as DTH during construction of the HMIC Cargo Dock Project, Hoonah Alaska for one year, beginning May 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 17, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–10685 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Summer Teacher Institute

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 9, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: National Summer Teacher Institute.

OMB Control Number: 0651–0077.

Form Numbers: (NSTI = National Summer Teacher Institute):

- NSTI 1 (Summer Teacher Institute Application)
- NSTI 2 (Summer Teacher Institute Participant Survey)
- NSTI 3 (Summer Teacher Institute Webinar/Workshop Survey)

Type of Request: Extension and revision of a currently approved information collection.

Number of Respondents: 7,000 respondents per year.

Average Hour per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 30 minutes (0.5 hours) to complete a response, depending on the complexity of the particular item. This includes the time to gather the necessary information, create the documents, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 2,999 hours.

Estimated Total Annual Non-Hour Cost Burden: $0.

Needs and Uses: The National Summer Teacher Institute (NSTI) is a multi-day professional development training opportunity open to all K–12 teachers nationwide. NSTI is designed to increase teachers' knowledge of making, inventing, creating, and protecting intellectual property so they can inspire the next generation of innovators and entrepreneurs. The information gathered in this information collection includes applications for the NSTI. The program application requires interested individuals to certify that they: Are educators with at least 3 years' experience; identify STEM-related fields they have taught in the last year; identify STEM-related fields they plan to teach in the upcoming year; and acknowledge their commitment to incorporate the learnings from the NSTI into their curriculum, where applicable, and cooperate with sharing lessons and outcomes with teachers and USPTO.

The USPTO also conducts webinars and workshops for K–12 educators in conjunction with or subsequent to the NSTI to provide information on IP, invention, and STEM topics of interest to K–12 educators. Workshops will be available for educators with less than 3 years of experience, pre-service teachers, higher education faculty, home school, and informal educators. USPTO plans to conduct surveys on the NSTI, workshops, and the webinars in order to gain useful feedback from program participants.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 0651–0077.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0077 information request'' in the subject line of the message.

• *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2021–10587 Filed 5–19–21; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Announcement of Public Hearing; Title IX of the Education Amendments of 1972

AGENCY: Office for Civil Rights, U.S. Department of Education.

ACTION: Notice.

SUMMARY: The U.S. Department of Education's Office for Civil Rights (OCR) announces a virtual public hearing to gather information for the purpose of improving enforcement of Title IX of the Education Amendments of 1972 (Title IX). OCR seeks comments from the public at the hearing on steps the Department can take to ensure that schools are providing students with educational environments free from discrimination in the form of sexual harassment, which encompasses sexual assault and other forms of sexual violence; to ensure that schools have grievance procedures that provide for the fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination, cognizant of the sensitive issues that are often involved; and to address discrimination based on sexual orientation and gender identity in educational environments. This notice provides information to members of the public regarding the hearing and OCR's request for live and written comments, and sets forth the dates and times, agenda, and instructions for attending this public hearing.

DATES: The dates and times when the public hearing will take place are listed under the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The Title IX public hearing will be held virtually. See the **SUPPLEMENTARY INFORMATION** section below for information on how to register to provide live comments during the hearing, how to submit written comments, and how to attend the hearing to listen to comments from others.

FOR FURTHER INFORMATION CONTACT: Alejandro Reyes, Director, Program Legal Group, Office for Civil Rights. Telephone: (202) 245–7272. Email: *Alejandro.Reyes@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: OCR is conducting this hearing pursuant to Executive Order 14021, *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity,* published in the **Federal Register** on March 11, 2021 (86 FR 13803), which directs the Secretary of Education to review the rule entitled ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' published in the **Federal Register** on May 19, 2020 (85 FR 30026), and other agency actions that are or may be inconsistent with governing law, including Title IX, and the Executive order. This hearing is also a step toward fulfilling the directives of Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,* published in the **Federal Register** on January 25, 2021 (86 FR 7023).

This section describes the agenda for the hearing, participation opportunities for members of the public, the format of the hearing, and information about the registration process to provide a live comment during the hearing, to submit a written comment, and to attend the hearing to listen to the comments of others.

Agenda: This public hearing is part of OCR's review of the Title IX regulations, including the 2020 amendments to the regulations, and other agency actions related to discrimination in the form of sexual harassment, including sexual violence, in educational environments, and including discrimination based on sexual orientation and gender identity in educational environments.

OCR has a particular interest in receiving live comments through the virtual hearing platform and written comments through the email address provided below on the Title IX regulations related to sexual harassment, including the 2020 amendments to the regulations. We also have a particular interest in receiving comments on discrimination based on sexual orientation and gender identity in educational environments. For participants who choose to address the 2020 amendments to the Title IX regulations related to sexual harassment or other topics, OCR encourages commenters to be as specific and detailed as possible regarding the regulatory provisions they are commenting on and the proposals they would like OCR to consider. Although OCR has a particular interest in receiving comments on the two topics identified above, participants may choose to address any topic regarding Title IX.

For more information about Title IX, please see *www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.*

Dates and Times: The public hearing will be held on the following dates and times:

June 7, 2021, from 9:00 a.m. to 5:00 p.m., Eastern time
June 8, 2021, from 9:00 a.m. to 5:00 p.m., Eastern time
June 9, 2021, from 11:00 a.m. to 7:00 p.m., Eastern time
June 10, 2021, from 11:00 a.m. to 7:00 p.m., Eastern time
June 11, 2021, from 9:00 a.m. to 5:00 p.m., Eastern time

Participation Opportunities: Individuals and organizations have two options for participating in this hearing and may choose one or both options: (1) Provide a live comment of up to three minutes during the virtual hearing; and (2) Submit a written comment.

Individuals may also attend the hearing to listen to comments from others. Please note that the transcript of the hearing will be posted to the OCR website as described below.

Format: The hearing will be held in an audio format. Commenters and attendees will not be visible. The hearing will be made available simultaneously in additional formats to enable access for individuals who are deaf or hard of hearing. For those needing additional reasonable accommodations, please see below for further details about how to make such a request. OCR staff members will be present for the entire hearing.

How to Attend the Hearing and Provide Comments: Individuals may (1) register to provide a live comment during the hearing; (2) submit a written comment; and (3) attend the hearing to listen to comments from others.

Live Comments: To request to provide a live comment of three minutes or less during the June 7, 2021 to June 11, 2021 hearing, please use the registration link below to register to provide a live comment on a particular day. The registration form will allow you to indicate the topic on which you wish to offer a live comment and request a specific two-hour window on the particular day during which you would like to offer your comment.

Registration link—*https://cvent.me/1w5YWo*

Individuals may provide only one live comment. OCR is interested in receiving comments that reflect a wide diversity of viewpoints and experiences. For this reason, we ask that those who are working together on comments avoid duplication of live comments to the extent possible. In recognition that some commenters may want to limit the disclosure of their personal information, the registration form will include instructions for registrants to provide a comment without providing their name.

The registration link is now open. We strongly encourage those who wish to provide a live comment to register promptly. Slots for providing a live comment will be assigned in the order in which requests are received until they are filled. Please note that we have reserved some slots for students and educators, as described below. Even after all slots are filled, we anticipate that a small number of slots may become available prior to or during each day of the hearing as a result of cancellations. We encourage those who do not register in time to receive a hearing slot to recheck the registration link for slots that become available in this way.

If you are assigned a slot to provide a live comment, you will receive an email containing personalized dial-in information, an access code, meeting web link, and the approximate time at which you will have your turn to comment. Commenters may use either the dial-in information or the hearing web link to provide their live comment. Commenters can then rejoin the hearing to listen to comments from others by using the attendee-only link below.

Throughout the hearing, OCR has designated slots for students, educators, and other commenters. We particularly encourage students who wish to provide live comments to register for day two (June 8, 2021) or day three (June 9, 2021) of the hearing. We have reserved a greater number of slots for students on these days. This will help to ensure that students have adequate opportunity to offer their insights and perspectives. We also encourage students whose class schedules impede participation during the hours of the hearing and others who have similar scheduling constraints to participate in the hearing by submitting written comments.

For those who need a reasonable accommodation in order to provide a live comment during the hearing, please see the ''Reasonable Accommodations'' section below for information about how to make such a request.

American Sign Language translation and closed captioning will be provided to all who attend the hearing using the attendee-only link below.

To Attend the Hearing: If you wish to attend the hearing to listen to comments from others, please visit the link listed below. No registration is required to use this attendee-only link. The attendee-only link will also be posted in OCR's Newsroom each day of the hearing, available at *www2.ed.gov/about/offices/list/ocr/newsroom.html.*

Attendee-only link—*https://cvent.me/8wkwkv*.

For those who wish to attend the hearing but do not have access to the internet, please request the dial-in information from the person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

To Submit Written Comments: OCR welcomes written comments on the topics for this public hearing. You may send your comments by email to *T9PublicHearing@ed.gov.* Please do not send comments or other material to other email addresses for OCR or the Department as those materials will not be considered part of the record for this hearing.

Written comments must be received at *T9PublicHearing@ed.gov* by 5:00 p.m. Eastern time on June 11, 2021, and include the subject line ''Written Comment: Title IX Public Hearing (topic of the comment).'' The email may include the name(s), occupation, city and State, organization/affiliation (if any), and email address of the person(s) submitting the written comment, along with the comment. Those wishing to maintain their privacy can submit a comment without including personally identifiable information.

Written comments submitted for this hearing are solely for the purpose of informing the Department's review of its regulations, guidance, and other agency actions under Title IX. Written comments will not be treated by OCR as complaints against a school or other recipient of Federal funding. To file a complaint of discrimination with OCR, please visit *ocrcas.ed.gov/contact-ocr,* or you may file a discrimination complaint by using OCR's online complaint form, available at *www2.ed.gov/about/offices/list/ocr/complaintintro.html.* OCR also will not notify law enforcement about alleged violations of criminal laws. For assistance with reporting child abuse, sexual violence, or other crimes, please visit *www.usa.gov/report-crime.*

Access to Records of the Hearing: The Department will post a transcript of this hearing on the OCR website, at *www2.ed.gov/about/offices/list/ocr/newsroom.html,* within 30 days of the hearing's completion or as soon thereafter as possible. OCR will not make a recording of the hearing in light of the potential sensitivity of some of the topics under discussion and the Department's interest in reducing barriers to participation. If OCR refers in the future to any comment that it receives through this process, it will not share any of the commenter's personally identifiable information without obtaining the commenter's prior consent.

Reasonable Accommodations: The hearing will be accessible to individuals with disabilities. Information for contacting the Department to request auxiliary aids or services to provide a live comment will be included in the registration process for providing a live comment during the hearing. If you will need an auxiliary aid or service to provide your comment, please notify the person listed under **FOR FURTHER INFORMATION CONTACT** in this notice at least two weeks before the scheduled meeting date so that OCR can ensure that all have access to the hearing, consistent with our Nation's civil rights laws.

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

Suzanne B. Goldberg,

Acting Assistant Secretary for Civil Rights.

[FR Doc. 2021–10629 Filed 5–19–21; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 27279]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 19, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, Fourth Report and Order, CG Docket No. 17–59, FCC 20–187.

Type of Review: New information collection.

Form Number: N/A.

Total Annual Burden: 199,412 hours.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,493 respondents; 582,434 responses.

Estimated Time per Response: .25 to 40 hours.

Frequency of Response: On-occasion reporting requirement, on-going reporting requirement and Third-party Disclosure requirement.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in sections 4(i), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 202, 217, 227, 227b, 251(e), 303(r), 403.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This notice and request for comments seeks to establish a new information collection as it pertains to the Advanced Methods to Target and Eliminate Unlawful Robocalls Fourth Report and Order (''Call Blocking Fourth Report and Order''), FCC 20–187. Unwanted and illegal robocalls have long been the Federal Communication Commission's (''Commission'') top source of consumer complaints and one of the Commission's top consumer protection priorities. In 2019, Congress passed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. In addition to directing the Commission to mandate adoption of caller ID authentication technology and encourage voice service providers to block calls by establishing safe harbors, the TRACED Act directs the Commission to ensure that both consumers and callers are provided with transparency and effective redress when calls are blocked in error. In the Call Blocking Fourth Report and Order, the Commission took several steps to better protect consumers from unwanted and illegal robocalls, and implement the TRACED Act. The Commission expanded the existing safe harbor for blocking of calls, established affirmative requirements to ensure that voice service providers better police their networks against illegal calls, and adopted several transparency and redress requirements to ensure that erroneous blocking can be quickly identified and remedied.

Call Blocking Fourth Report and Order, FCC 20–187, Paras. 22–31, 47 CFR 64.1200(n)(2)

A voice service provider must: . . . Take steps to effectively mitigate illegal traffic when it receives actual written notice of such traffic from the Commission through its Enforcement Bureau. In providing notice, the Enforcement Bureau shall identify with as much particularity as possible the suspected traffic; provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful; cite the statutory or regulatory provisions the suspected traffic appears to violate; and direct the voice service provider receiving the notice that it must comply with this section. Each notified provider must promptly investigate the identified traffic. Each notified provider must then promptly report the results of its investigation to the Enforcement Bureau, including any steps the provider has taken to effectively mitigate the identified traffic or an explanation as to why the provider has reasonably concluded that the identified calls were not illegal and what steps it took to reach that conclusion. Should the notified provider find that the traffic comes from an upstream provider with direct access to the U.S. Public Switched Telephone Network, that provider must promptly inform the Enforcement Bureau of the source of the traffic and, if possible, take steps to mitigate this traffic.

The first portion of the new information collection for which OMB approval is sought comes from the affirmative obligation adopted in the Call Blocking Fourth Report and Order that voice service providers effectively mitigate illegal traffic when notified of such traffic by the Commission's Enforcement Bureau. In adopting this requirement as well as the other affirmative obligations, the Commission made clear that, while most blocking is done by terminating voice service providers, originating and intermediate voice service providers are integral to stopping illegal calls. This requirement in particular gives the Commission an important tool in the fight to stop illegal calls.

Call Blocking Fourth Report and Order, FCC 20–187, Paras. 62–70, 47 CFR 64.1200(k)(10)

Any terminating provider that blocks calls on an opt-out or opt-in basis, either itself or through a third-party blocking service, must provide, at the request of the subscriber to a number, at no

additional charge and within 3 business days of such a request, a list of calls to that number, including the date and time of the call and the calling number, that the terminating provider or its designee blocked within the 28 days prior to the request.

The second portion of the new information collection for which OMB approval is sought comes from the requirement in the Call Blocking Fourth Report and Order that any terminating voice service provider that blocks calls on an opt-in or opt-out basis must provide, on the request of the subscriber to a particular number, a list of all calls intended for that number that the voice service provider or its designee has blocked. The list must include the prior 28 days of blocked calls and must be provided to the subscriber within 3 business days.The TRACED Act expressly directs the Commission to ensure that both consumers and callers are provided with transparency. In the Call Blocking Fourth Report and Order, the Commission determined that, while opt-in or opt-out blocking must already be disclosed to consumers, a consumer may be unaware that particular calls are blocked absent such a list. Consumers can use the list to determine whether to opt out of blocking services or reach out to callers whose calls may have been blocked.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–10601 Filed 5–19–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 27383]

Meeting of the Ending 9–1–1 Fee Diversion Now Strike Force

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Federal Communications Commission (Commission) announces and provides a preliminary agenda for the first meeting of the ''Ending 9–1–1 Fee Diversion Now Strike Force'' (911 Strike Force).

DATES: Thursday, June 3, 2021, beginning at 10 a.m. EDT.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Evanoff, Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–0848; or Jill Coogan, Deputy Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–1499; or email: *911StrikeForce@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The agenda for the meeting will include introducing members of the 911 Strike Force, including the Committee Chair and Vice-Chair, and establishing working groups that will assist the 911 Strike Force in carrying out its work. This agenda may be modified at the discretion of the 911 Strike Force Chair and the Designated Federal Officer. As will be discussed, the 911 Strike Force's mission is to study how the Federal Government can most expeditiously end diversion by a state or taxing jurisdiction of 911 fees or charges by (1) determining the effectiveness of any Federal laws, including regulations, policies, and practices, or budgetary or jurisdictional constraints, to end fee diversion; (2) considering whether criminal penalties would further prevent diversion; and (3) determining the impacts of diversion. The 911 Strike Force will publish on the Commission's website and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on its findings no later than September 23, 2021. The June 3, 2021 meeting will be held in a wholly electronic format to accommodate continuing public health precautions related to the coronavirus (COVID–19) pandemic.

The June 3, 2021, meeting will be open to members of the general public via live broadcast over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may also follow the meeting on Twitter @fcc or via the Commission's Facebook page at *www.facebook.com/fcc.* Members of the public may submit any questions that arise during the meeting to *livequestions@fcc.gov.*

Open captioning will be provided for the live stream. Other reasonable accommodations for people with disabilities are available upon request. To request an accommodation, or for materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Please allow at least five days' advance notice; last-minute requests will be accepted but may not be possible to accommodate.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–10597 Filed 5–17–21; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1258; FRS 26944]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 19, 2021. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1258.

Title: Alternative Dispute Resolution Intake Form Requests, FCC Form 5628.

Form Number: FCC Form 5628.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents and Responses: 7 respondents and 7 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in Administrative Dispute Resolution Act, 5 U.S.C. 571 *et seq.;* Civil Justice Reform, Executive Order 12988; 29 CFR 1614.102(b)(2), 1614.105(f), 1614.108(b), and 1614.603.

Total Annual Burden: 25 hours.

Total Annual Cost: $10,000.

Privacy Act Impact Assessment: Yes. An existing system of records for FCC/OWD–2, Alternative Dispute Resolution Program, is published in the **Federal Register** at 84 FR 14374 (April 10, 2019).

Nature and Extent of Confidentiality: Confidentiality of information will be provided in accordance with the Privacy Act. The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: FCC employees and related individuals may seek a forum through the Alternative Dispute Resolution Program for inquiry and resolution of EEO and non-EEO matters by completing FCC Form 5628.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–10602 Filed 5–19–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, May 20, 2021 at 10:00 a.m.

PLACE: Virtual meeting. *Note:* Because of the COVID–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: The May 20, 2021 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–10801 Filed 5–18–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than June 4, 2021.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org*:

1. *The Merry Rea Thomson Revocable Trust, Merry Rea Thomson, as trustee, both of Pass Christian, Mississippi; John C. Thomson, Port Orange, Florida; Susan T. Eaves and Richard S. Thomson, Jr., both of Hattiesburg, Mississippi;* to become members of the Thomson Family Control Group, a group acting in concert, to retain voting shares of First National Corporation of Picayune, and thereby indirectly retain voting shares of First National Bank of Picayune (FNB Picayune Bank), both of Picayune, Mississippi.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The F. Addison Survivor Trust and the Marion A Jones Descendant Trust, F. Addison Jones, as trustee, the David A. Jones Irrevocable Trust and the F. Austin Jones Irrevocable Trust, Grinnell State Bank and F. Addison Jones, as co-trustees, Fitzpatrick A Jones, David Aric Jones, Alyson Marie Jones, all of Grinnell, Iowa; Anthony Joseph Jones, Cumming, Iowa; Kelsey Megan McCulley, Wellman, Iowa; and Miranda Austin Bradberry, Tiffin, Iowa;* to become members of the Jones Family Control Group, a group acting concert, by retaining voting shares of Grinnell Bancshares, Inc., and thereby indirectly retain voting shares of Grinnell State Bank, both of Grinnell, Iowa.

Board of Governors of the Federal Reserve System, May 14, 2021.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2021–10576 Filed 5–19–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #69]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA)

guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: The necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 3, 2021.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 (#69)/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may access CMS' website at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Reporting Requirements for Additional Funding for Medicaid HCBS During the COVID–19 Emergency; *Type of Information Collection Request:* New collection; *Use:* CMS is responsible for ensuring that states receiving the temporary 10 percentage point increase comply with the statutory requirements specified in Section 9817 of the American Rescue Plan Act of 2021 (Pub. L. 117–2). To do so, CMS released a State Medicaid Director Letter (SMDL) that specifies the information that states must report to CMS in order to receive the temporary 10 percentage point increase. Participating states are required to submit initial and quarterly HCBS (home and community-based services) spending plans and narratives to CMS to report how the additional funding will be expended on activities that the state has implemented and/or intends to implement to enhance, expand, or strengthen HCBS to demonstrate that the state is supplementing, but not supplanting, existing state funds expended for Medicaid HCBS.

To ensure maximum state flexibility and to reduce the reporting burden on states as much as possible, states will submit spending plans and narratives in their own preferred format. CMS will not require states to use a standardized template or form. Instead, the SMDL details the minimum reporting requirements in full. The SMDL stipulates that in order to receive the additional funding available under Section 9817, states must initially submit the following via email within 30 days of the release of the SMDL:

- *Initial HCBS Spending Plan Projection:* State estimates of the total amount of funds attributable to the increase in FMAP that the state anticipates claiming between April 1, 2021 and March 31, 2022, as well as the anticipated expenditures for the activities the state intends to implement to enhance, expand, or strengthen HBCS under the state Medicaid program between April 1, 2021 and March 31, 2024.
- *Initial HCBS Spending Narrative:* Information on the state's required section 9817 activities and the connection between the spending plan projection and the scope of the activities. States must provide sufficient detail to affirm that the state's activities enhance, expand, or strengthen HCBS under the state Medicaid program.

States must then submit a quarterly HCBS spending plan and narrative for CMS review and approval; states may update their initial spending plan submissions through the quarterly spending plan submissions. States must report on a quarterly basis until funds are expended. As part of the reporting cycle, there are two documents to be submitted:

- *Quarterly HCBS Spending Plan:* State estimate the total amount of funds attributable to the increase in FMAP that the state has claimed and/or anticipates claiming between April 1, 2021 and March 31, 2022, as well as anticipated and/or actual expenditures for the state's activities to implement, to enhance, expand, or strengthen HBCS under the state Medicaid program between April 1, 2021, and March 31, 2024.
- *Quarterly HCBS Spending Narrative:* Similar to the narrative that was submitted with the initial HCBS spending plan, this is a shorter narrative to provide activity updates. A state may also choose to provide information on activity outcomes, lessons learned, challenges, or any other information that the state deems as relevant and important to advancing HCBS.

When submitting the initial and quarterly HCBS spending plan and narrative, the designated state point of contact should attest to the following via email:

- The state is not imposing stricter eligibility standards, methodologies, or procedures for HCBS programs and services than were in place on April 1, 2021;
- The state is preserving covered HCBS, including the services themselves and the amount, duration, and scope of those services, in effect as of April 1, 2021; and
- The state is maintaining provider payments at a rate no less than those in place as of April 1, 2021. *Form Number:* CMS–10398 (#69) (OMB control

number: 0938–1148); *Frequency:* Once, quarterly, and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 616; *Total Annual Hours:* 1,344. (For policy questions regarding this collection contact Ryan Shannahan at 410–786–0295.)

Dated: May 14, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–10574 Filed 5–19–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10536, CSM–10225 and CMS–10764]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by June 21, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Eligibility and Enrollment (EE) Implementation Advanced Planning Document (IAPD) Template; *Use:* To assess the appropriateness of states' requests for enhanced federal financial participation for expenditures related to Medicaid eligibility determination systems, we will review the submitted information and documentation to make an approval determination for the advanced planning document. *Form Number:* CMS–10536 (OMB control number: 0938–1268); *Frequency:* Yearly, once, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 168; *Total Annual Hours:* 2,688. (For policy questions regarding this collection contact Edward Dolly at 410–786–8554.)

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Disclosures Required of Certain Hospitals and Critical Access Hospitals Regarding Physician Ownership; *Use:* This information collection relates to the required third party disclosures by certain Medicare-participating hospitals and Critical Access Hospitals (CAHs) and physicians to their patients. There are 5 types of disclosures required. The intent of the disclosure notice is to assist the patient in making an informed decision regarding their care. The first disclosure requires physician owned hospitals and CAHs to disclose to its patients whether the hospitals/CAHs are physician-owned and, if so, the names of the physician-owners. The second disclosure requires the physician owner or investor in the hospital, as part of his or her continued medical staff membership or admitting privileges, to disclose to the patient being referred to the hospital any ownership or investment interest held by the physician or an immediate family member of the physician. The third disclosure requires physician owned hospitals to disclose on all public websites for and in any public advertising for the hospital that the hospital is owned or invested in by physicians. The fourth and fifth disclosures apply to all hospitals and CAHs that do not have a Doctor of Medicine (MD) or a Doctor of Osteopathic Medicine (DO) on the premises at all times to disclose this to patients upon admission or registration for both inpatient and specified outpatient services. These hospitals and CAHs must provide a written disclosure to the patients admitted to the hospital and must also post a conspicuous notice in the Emergency Departments (ED) which states that the hospital does not have a physician present 24 hours per day, 7 days per week. *Form Number:* CMS–10225 (OMB control number: 0938–1034); *Frequency:* Occasionally; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 210; *Total Annual Responses:* 1,193,890; *Total Annual Hours:* 78,935. (For policy questions regarding this collection contact Caroline Gallaher at 410–786–8705).

3. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Evaluation of Risk Adjustment Data Validation

(RADV) Appeals and Health Insurance Exchange Outreach Training Sessions; *Use:* CMS recognizes that the success of accurately identifying risk-adjustment payments and payment errors is dependent upon the data submitted by Medicare Advantage Organizations (MAOs), and is strongly committed to providing appropriate education and technical outreach to MAOs and third-party administrators (TPAs). In addition, CMS is strongly committed to providing appropriate education and technical outreach to States, issuers, self-insured group health plans and TPAs participating in the Marketplace and/or market stabilization programs mandated by the Affordable Care Act (ACA).

CMS will strengthen outreach and engagement with MAOs and stakeholders in the Marketplace through satisfaction surveys following contract-level (CON) RADV audit and Health Insurance Exchange training events. The survey results will help to determine stakeholders' level of satisfaction with trainings, identify any issues with training and technical assistance delivery, clarify stakeholders' needs and preferences, and define best practices for training and technical assistance. *Form Number:* CMS–10764 (OMB control number: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 4,270; *Total Annual Responses:* 4,270; *Total Annual Hours:* 1,068. (For questions regarding this collection contact Melissa Barkai at 410–786–4305.)

Dated: May 17, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–10680 Filed 5–19–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0226]

Determination That AVACLYR (Acyclovir Ophthalmic Ointment), 3 Percent, 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 or Agency) has determined that AVACLYR (acyclovir ophthalmic ointment), 3 percent, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for acyclovir ophthalmic ointment, 3 percent, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nisha Shah, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–4455, *Nisha.Shah@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which 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.

AVACLYR (acyclovir ophthalmic ointment), 3 percent, is the subject of NDA 202408, held by Fera Pharmaceuticals, LLC, and initially approved on March 29, 2019. AVACLYR is indicated for the treatment of acute herpetic keratitis (dendritic ulcers) in patients with herpes simplex (HSV–1 and HSV–2) virus.

In a letter dated August 21, 2019, Fera Pharmaceuticals, LLC notified FDA that AVACLYR (acyclovir ophthalmic ointment), 3 percent, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Cumulus Pharmaceutical LLC submitted a citizen petition dated February 23, 2021, (Docket No. FDA–2021–P–0226), under 21 CFR 10.30, requesting that the Agency determine whether AVACLYR (acyclovir ophthalmic ointment), 3 percent, was 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 AVACLYR (acyclovir ophthalmic ointment), 3 percent, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that AVACLYR (acyclovir ophthalmic ointment), 3 percent, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of AVACLYR (acyclovir ophthalmic ointment), 3 percent, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list AVACLYR (acyclovir ophthalmic ointment), 3 percent, 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. Any ANDAs referencing AVACLYR (acyclovir ophthalmic ointment), 3 percent, 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: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10593 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0166]

International Council for Harmonisation Q12: Implementation Considerations for Food and Drug Administration-Regulated Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''ICH Q12: Implementation Considerations for FDA-Regulated Products.'' The International Council for Harmonisation (ICH) guidance for industry entitled ''Q12 Technical and Regulatory Considerations for Pharmaceutical Product Lifecycle Management'' and its Annexes (ICH Q12, May 2021) provide a framework to facilitate the management of postapproval chemistry, manufacturing, and controls (CMC) changes in a more predictable and efficient manner. ICH Q12 includes regulatory tools and enablers with associated guiding principles that should enhance industry's ability to manage postapproval changes and increase transparency between industry and regulatory authorities, supporting innovation and continual improvement. This guidance complements ICH Q12 by clarifying how its tools and enablers can be implemented within the U.S. regulatory system. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by July 19, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0166 for ''ICH Q12: Implementation Considerations for FDA-Regulated Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or Office of Policy, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ashley Boam, CDER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4192, Silver Spring, MD 20993–0002, 301–796–6341; Stephen Ripley, CBER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Andrew Yeatts, CDRH, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 66, Rm. 5510, Silver Spring, MD 20993–0002, 301–796–4539.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''ICH Q12: Implementation Considerations for FDA-Regulated Products.'' ICH Q12 provides a framework to facilitate the management of postapproval CMC changes in a more predictable and efficient manner. It includes regulatory tools and enablers with associated guiding principles that should enhance industry's ability to manage postapproval changes and increase transparency between industry and regulatory authorities, supporting innovation and continual improvement.

This guidance should be read in conjunction with ICH Q12, which this guidance complements by clarifying how the ICH Q12 tools and enablers can be implemented within the U.S. regulatory system. These guidances apply to drug substances and drug products that are the subject of new drug applications (NDAs), biologics license applications (BLAs), abbreviated new drug applications (ANDAs), and supplements to these applications regulated by CDER and CBER. They also apply to combination products with device constituent parts that are the subject of NDAs, BLAs, ANDAs, and supplements to these applications regulated by CDER and CBER. This guidance provides considerations for implementation of ICH Q12 tools, such as established conditions, postapproval change management protocols, and the product lifecycle management document. The considerations provided follow the order of the sections in ICH Q12 and are specific to FDA's implementation.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''ICH Q12: Implementation Considerations for FDA-Regulated Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information for the submission of NDAs and ANDAs in 21 CFR 314.50, 314.70, 314.71, 314.94, and 314.97, including supplements, have been approved under OMB control number 0910–0001. The collections of information in 21 CFR parts 210 and 211 have been approved under OMB control number 0910–0139. The collections of information for the submission of BLAs under 21 CFR 601.2 and 601.12 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products,* or *https://www.regulations.gov.*

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10611 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0131]

Feasibility and Early Feasibility Clinical Studies for Certain Medical Devices Intended to Therapeutically Improve Glycemic Control in Patients With Type 2 Diabetes Mellitus; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Feasibility and Early Feasibility Clinical Studies for Certain Medical Devices Intended to Therapeutically Improve Glycemic Control in Patients with Type 2 Diabetes Mellitus.'' This draft guidance provides recommendations for feasibility and early feasibility clinical studies for certain medical devices intended to therapeutically improve glycemic control in patients with Type 2 Diabetes Mellitus. These medical devices are intended to therapeutically reduce glycated hemoglobin in Type 2 Diabetes Mellitus patients independent of medication (*e.g.,* insulin) delivery. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by July 19, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–

2021–D–0131 for ''Feasibility and Early Feasibility Clinical Studies for Certain Medical Devices Intended to Therapeutically Improve Glycemic Control in Patients with Type 2 Diabetes Mellitus.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Feasibility and Early Feasibility Clinical Studies for Certain Medical Devices Intended to Therapeutically Improve Glycemic Control in Patients with Type 2 Diabetes Mellitus'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: April Marrone, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2604, Silver Spring, MD 20993–0002, 240–402–6510.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance provides recommendations for the design of feasibility and early feasibility clinical studies for certain medical devices intended to therapeutically improve glycemic control in patients with Type 2 Diabetes Mellitus (T2DM). T2DM is a metabolic disorder that is characterized by high blood sugar levels, insulin resistance, and relative lack of insulin. In 2020, it is estimated that 10.5 percent of the U.S. population, or roughly 34.2 million Americans, have diabetes and that T2DM accounts for 90 percent to 95 percent of all diabetes cases.[1]

Due to the prevalence of T2DM in the United States, many medical device manufacturers and researchers seek to develop therapeutic medical devices that are intended to improve glycemic control in patients with T2DM. While there are several legally marketed devices that help patients manage T2DM, including medical devices intended to measure or monitor blood sugar (*e.g.,* blood glucose monitors, continuous glucose monitors) or dose and deliver insulin (*e.g.,* insulin pens, pumps, syringes), there are currently no legally marketed medical devices in the United States that are intended to therapeutically improve glycemic control in patients with T2DM.

In recent years, medical devices that are therapeutically intended to improve glycemic control in patients with T2DM have become an increasing area of interest, and manufacturers have requested the Agency's feedback regarding feasibility and early feasibility clinical studies for these medical devices. This draft guidance represents the Agency's initial thinking on feasibility and early feasibility clinical studies for these medical devices. FDA's recommendations may change as more information becomes available.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on feasibility and early feasibility clinical studies for certain medical devices intended to therapeutically improve glycemic control in patients with T2DM. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This draft guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Feasibility and Early Feasibility Clinical Studies for Certain Medical Devices Intended to Therapeutically Improve Glycemic Control in Patients with Type 2 Diabetes Mellitus'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 19045 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidances have been approved by OMB as listed in the following table:

[1] Center for Disease Control, National Diabetes Statistics Report 2020: Estimates of Diabetes and its Burden in the United States, available at *https://www.cdc.gov/diabetes/pdfs/data/statistics/national-diabetes-statistics-report.pdf.*

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
812	Investigational Device Exemption	0910–0078
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards.	0910–0755
56	Institutional Review Boards	0910–0130

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10599 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0033]

Morton Grove Pharmaceuticals Inc. et al.; Withdrawal of Approval of Seven Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 5, 2021. The document announced the withdrawal of approval of seven abbreviated new drug applications (ANDAs) from multiple applicants as of April 5, 2021. The document indicated that FDA was withdrawing approval of the following five ANDAs, after receiving a withdrawal request from Neopharma, Inc., 211 College Road East, Suite 101, Princeton, NJ 08540: ANDA 078383, Pioglitazone Hydrochloride (HCl) Tablets, Equivalent to (EQ) 15 milligrams (mg) base, EQ 30 mg base, and EQ 45 mg base; ANDA 078953, Irinotecan HCl Injection, 40 mg/2 milliliters (mL) (20 mg/mL) and 100 mg/5 mL (20 mg/mL); ANDA 079049, Alendronate Sodium Tablets, EQ 5 mg base, EQ 10 mg base, EQ 35 mg base, and EQ 70 mg base; ANDA 090732, Anastrozole Tablets, 1 mg; and ANDA 203161, Irbesartan Tablets, 75 mg, 150 mg, and 300 mg. Before FDA withdrew the approval of these ANDAs, Neopharma, Inc., informed FDA that it did not want the approval of the ANDAs withdrawn. Because Neopharma, Inc., timely requested that approval of these ANDAs not be withdrawn, the approval of ANDAs 078383, 078953, 079049, 090732, and 203161 is still in effect.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Friday, March 5, 2021 (86 FR 12950), appearing on page 12950 in FR Doc. 2021–04520, the following corrections are made on pages 12950 and 12951 in the table:

The entries for ANDAs 078383, 078953, 079049, 090732, and 203161 are removed.

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10588 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0162]

Determination That NORMODYNE (Labetalol Hydrochloride) Injection, 5 Milligrams per Milliliter, 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 or Agency) has determined that NORMODYNE (labetalol hydrochloride) injection, 5 milligrams per milliliter (mg/mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Christopher Koepke, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3600, *Christopher.Koepke@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which 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.

NORMODYNE (labetalol hydrochloride) injection, 5 mg/mL, is the subject of NDA 018686, held by Schering Corp., and initially approved on August 1, 1984. NORMODYNE is indicated for control of blood pressure in severe hypertension.

In a letter dated September 28, 2004, Schering Corp. notified FDA that NORMODYNE (labetalol hydrochloride) injection, 5 mg/mL, was being discontinued and requested withdrawal of NDA 018686 for NORMODYNE (labetalol hydrochloride), and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book. In the **Federal Register** of June 16, 2006 (71 FR 34940), FDA announced that it was withdrawing approval of NDA 018686, effective June 16, 2006.

Nexsen Pruet, LLC, submitted a citizen petition dated February 4, 2021 (Docket No. FDA–2021–P–0162), under 21 CFR 10.30, requesting that the Agency determine whether NORMODYNE (labetalol hydrochloride) injection, 5 mg/mL, was 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 NORMODYNE (labetalol hydrochloride) injection, 5 mg/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal NORMODYNE (labetalol hydrochloride) injection, 5 mg/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NORMODYNE (labetalol hydrochloride) injection, 5 mg/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. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also 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: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10594 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–2494]

Peripheral Vascular Atherectomy Devices—Premarket Notification Submissions; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Peripheral Vascular Atherectomy Devices—Premarket Notification Submissions.'' This guidance provides updated recommendations for premarket submissions for a new or modified peripheral vascular atherectomy device.

DATES: The announcement of the guidance is published in the **Federal Register** on May 20, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include Docket No. FDA–2018–D–2494 for ''Peripheral Vascular Atherectomy Devices—Premarket Notification [510(k)] Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked

as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Peripheral Vascular Atherectomy Devices—Premarket Notification [510(k)] Submissions'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jhumur Banik, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2550, Silver Spring, MD 20993–0002, 240–402–5239.

SUPPLEMENTARY INFORMATION:

I. Background

Atherectomy is an interventional procedure performed to remove atherosclerotic plaque from diseased arteries. FDA has developed this guidance for members of industry who submit and FDA staff who review premarket submissions for atherectomy devices used in the peripheral vasculature. This guidance is intended to provide recommendations for information to include in premarket notifications (510(k)) for peripheral vascular atherectomy devices (*e.g.,* descriptive characteristics, labeling, biocompatibility, sterility, nonclinical, animal, and clinical performance testing).

FDA incorporated the information in the draft guidance entitled ''Select Updates for Peripheral Vascular Atherectomy Devices—Premarket Notification [510(k)] Submissions'' into the final guidance document after issuing these select updates for public comment. FDA did not receive any comments on the draft guidance that appeared in the **Federal Register** of July 27, 2018 (83 FR 35658). FDA has incorporated the recommendations in the draft select updates into the existing final guidance without significant changes. FDA did not substantively change the sections of the existing atherectomy guidance that were not affected by the select update.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Peripheral Vascular Atherectomy Devices—Premarket Notification [510(k)] Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Peripheral Vascular Atherectomy Devices—Premarket Notification [510(k)] Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16013 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part/section or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
812	Investigational Device Exemption	0910–0078
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
807, subparts A through D	Electronic Submission of Medical Device Registration and Listing.	0910–0625
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards.	0910–0755
56	Institutional Review Boards	0910–0130
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies.	0910–0119
801.150(a)(2) and (e)	Agreement for Shipment of Devices for Sterilization	0910–0131
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10592 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1130]

Implanted Brain-Computer Interface Devices for Patients With Paralysis or Amputation—Non-Clinical Testing and Clinical Considerations; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Implanted Brain-Computer Interface (BCI) Devices for Patients with Paralysis or Amputation—Non-Clinical Testing and Clinical Considerations.'' Implanted brain-computer interface (BCI) devices are neuroprostheses that interface with the central or peripheral nervous system to restore lost motor and/or sensory capabilities in patients with paralysis or amputation. This guidance provides recommendations for nonclinical testing and study design considerations for investigational device exemptions feasibility and pivotal clinical studies.

DATES: The announcement of the guidance is published in the **Federal Register** on May 20, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–N–1130 for ''Implanted Brain-Computer Interface(BCI) Devices for Patients with Paralysis or Amputation—Non-clinical Testing and Clinical Considerations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Implanted Brain-Computer Interface (BCI) Devices for Patients with Paralysis or Amputation—Non-clinical Testing and Clinical Considerations'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Vivek Pinto, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4108, Silver Spring, MD 20993–0002, 301–796–6610.

SUPPLEMENTARY INFORMATION:

I. Background

The field of implanted BCI devices is progressing rapidly from fundamental neuroscience discoveries to translational applications and market access. Implanted BCI devices have the potential to bring benefit to people with severe disabilities by increasing their ability to interact with their environment, and consequently, providing new independence in daily life. On November 21, 2014, the Center for Devices and Radiological Health (CDRH) held an open public workshop with the aim of fostering an open discussion on the scientific and clinical considerations associated with the

development of implanted BCI devices. FDA considered the input provided during this workshop to develop this guidance document. This guidance document provides clinical study design and nonclinical testing recommendations associated with BCI devices.

This is a leapfrog guidance: A type of guidance that serves as a mechanism by which the Agency can share initial thoughts regarding emerging technologies that are likely to be of public health importance early in product development. This leapfrog guidance represents the Agency's initial thinking and our recommendations may change as more information becomes available.

A notice of availability of the draft guidance appeared in the **Federal Register** of February 25, 2019 (84 FR 6007). FDA considered comments received and revised the guidance as appropriate in response to the comments, including the addition of a brief section on Human Factors recommending that usability information be captured early in device development and continue iteratively, and a recommendation in the ''Home Use'' section, to describe the training related to home use of the devices and how the effectiveness of this training will be evaluated. A clarification was also added in the Scope section to highlight that for any BCI devices with technological characteristics, components, or indications for use or patient population not described in the guidance, manufacturers/investigators should submit a pre-submission to seek FDA feedback.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Implanted Brain-Computer Interface (BCI) Devices for Patients with Paralysis or Amputation—Non-Clinical Testing and Clinical Considerations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Implanted Brain-Computer Interface (BCI) Devices for Patients with Paralysis or Amputation—Non-clinical Testing and Clinical Considerations '' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500045 to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
812	Investigational Device Exemption	0910–0078
''Requests for Feedback on Medical Device Submissions: The Q-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
801	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards.	0910–0755

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10622 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–2837]

Testing and Labeling Medical Devices for Safety in the Magnetic Resonance Environment; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the final guidance entitled ''Testing and Labeling Medical Devices for Safety in the Magnetic Resonance (MR) Environment.'' FDA developed this guidance to provide FDA's recommendations on the testing needed for assessing the safety and compatibility of medical devices in the Magnetic Resonance (MR) Environment and the recommended format for Magnetic Resonance Imaging (MRI) Safety Information in medical device labeling. This guidance document is anticipated to aid in consistency of reviews, testing, and MRI safety labeling across a variety of medical devices.

DATES: The announcement of the guidance is published in the **Federal Register** on May 20, 2021.

ADDRESSES: You may submit either electronic or written comments on

Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No FDA–2019–D–2837 for ''Testing and Labeling Medical Devices for Safety in the Magnetic Resonance (MR) Environment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Testing and Labeling Medical Devices for Safety in the Magnetic Resonance (MR) Environment'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Terry Woods, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2116, Silver Spring, MD 20993–0002, 301–796–2503.

SUPPLEMENTARY INFORMATION:

I. Background

The MR Environment presents unique safety hazards for patients and other persons with devices near or inside an MR system. Ensuring safety and effectiveness for a medical device intended to enter the MR Environment should be an integral part of the device risk management. Appropriate testing and labeling, such as well supported MR Conditional labeling, should form the basis of adequate mitigations for the unique safety hazards in the MR Environment. This guidance document outlines FDA's current thinking on the testing needed for assessing the safety and compatibility of medical devices in the MR Environment and the recommended format for MRI Safety Information in device labeling. This document supersedes FDA Guidance entitled ''Establishing Safety and Compatibility of Passive Implants in the Magnetic Resonance (MR) Environment'', dated December 11, 2014.

A notice of availability of the draft guidance appeared in the **Federal Register** of August 2, 2019 (84 FR 37886). FDA considered comments received and revised the guidance as appropriate in response to the comments, including clarification of approaches for radiofrequency heating assessments and associated labeling. Revisions were also made to provide more guidance about when gradient induced vibration and heating assessments are needed and to include the possibility of magnetically induced force and torque causing equipment to tip over.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Testing and Labeling Medical Devices for Safety in the Magnetic Resonance (MR) Environment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-*

radiation-emitting-products. This guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Testing and Labeling Medical Devices for Safety in the Magnetic Resonance (MR) Environment'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 2019–16505 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''	De Novo classification process	0910–0844
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
801 and 809	Medical Device Labeling Regulations	0910–0485

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10598 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5767]

Abbreviated New Drug Applications for Certain Highly Purified Synthetic Peptide Drug Products That Refer to Listed Drugs of Recombinant Deoxyribonucleic Acid; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''ANDAs for Certain Highly Purified Synthetic Peptide Drug Products That Refer to Listed Drugs of rDNA Origin.'' This guidance is intended to assist potential applicants in determining when an application for a synthetic peptide drug product that refers to a previously approved peptide drug product of Recombinant Deoxyribonucleic Acid (rDNA) origin should be submitted as an abbreviated new drug application (ANDA) under the Federal Food, Drug, and Cosmetic Act (FD&C Act) rather than as a new drug application (NDA) under the FD&C Act. This guidance finalizes the draft guidance of the same title issued on October 3, 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on May 20, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–5767 for ''ANDAs for Certain Highly Purified Synthetic Peptide Drug Products That Refer to Listed Drugs of rDNA Origin.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: James Hanratty, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1672, Silver Spring, MD 20993–0002, 240–402–4718, *James.Hanratty@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''ANDAs for Certain Highly Purified Synthetic Peptide Drug Products That Refer to Listed Drugs of rDNA Origin.'' This guidance is intended to assist potential applicants in determining when an application for a synthetic peptide drug product that refers to a previously approved peptide drug product of rDNA origin should be submitted as an ANDA under section 505(j) of the FD&C Act (21 U.S.C. 355(j)) rather than as an NDA under section 505(b) of the FD&C Act.

This guidance finalizes the draft guidance entitled ''ANDAs for Certain Highly Purified Synthetic Peptide Drug Products That Refer to Listed Drugs of rDNA Origin'' issued on October 3, 2017 (82 FR 46075). FDA considered comments received on the draft guidance as the guidance was finalized. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''ANDAs for Certain Highly Purified Synthetic Peptide Drug Products That Refer to Listed Drugs of rDNA Origin.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collection of information required under 21 CFR part 314 for the submission of NDAs and ANDAs is approved under OMB control number 0910–0001, and the submission of controlled correspondence pertaining to ANDAs is approved under OMB control number 0910–0797.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10603 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidances by July 19, 2021 to ensure that the Agency considers your comment on these draft guidances before it begins work on the final versions of the guidances.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4728, Silver Spring, MD 20993–0002, 240–402–7959.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on March 24, 2021. This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Amlodipine Besylate; Celecoxib.
Fluticasone Furoate; Umeclidinium Bromide; Vilanterol Trifenatate.
Lumateperone Tosylate.
Meloxicam.
Metoclopramide Hydrochloride.
Midazolam.
Pexidartinib Hydrochloride.
Pitolisant Hydrochloride.
Quinidine Gluconate.
Trifarotene.
Ubrogepant.
Voxelotor.
Zanubrutinib.

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Azacitidine.
Dasatinib.
Fluticasone Propionate.
Ledipasvir; Sofosbuvir.
Nitrofurantoin.
Pentosan Polysulfate Sodium.
Sofosbuvir.
Tofacitinib.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if

it satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that these draft guidances contain no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Electronic Access

Persons with access to the internet may obtain the draft guidances at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10589 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0406]

Frequently Asked Questions—Statement of Investigator (Form FDA 1572) (Revision 1); Draft Information Sheet Guidance for Sponsors, Clinical Investigators, and Institutional Review Boards; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft information sheet guidance for sponsors, clinical investigators, and institutional review boards (IRBs) entitled ''Frequently Asked Questions—Statement of Investigator (Form FDA 1572) (Revision 1).'' This draft guidance partially revises the final information sheet guidance for sponsors, clinical investigators, and IRBs entitled ''Frequently Asked Questions—Statement of Investigator (Form FDA 1572)'' (May 2010) (the Form FDA 1572 FAQ Guidance) to explain FDA's current thinking regarding waivers of the signature requirement for Form FDA 1572. This draft guidance proposes to revise responses to frequently asked questions 10, 11, and 13 from the Form FDA 1572 FAQ Guidance by including information regarding the waiver of the Form FDA 1572 signature requirement and proposes a new section regarding signature waivers.

DATES: Submit either electronic or written comments on the draft guidance by July 19, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2008–D–0406 for ''Frequently Asked Questions—Statement of Investigator (Form FDA 1572) (Revision 1).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Paul Gouge, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, Rm. 6328, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3093, *paul.gouge@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft information sheet guidance for sponsors, clinical investigators, and IRBs entitled ''Frequently Asked Questions—Statement of Investigator (Form FDA 1572) (Revision 1).'' The draft guidance proposes to revise responses to the following questions from the Form FDA 1572 FAQ Guidance:

- Question 10: Must investigators who conduct studies outside the United States sign a 1572?
- Question 11: If a foreign clinical study is being conducted under an IND [investigational new drug application], what are the investigator's responsibilities with respect to regional, national, or local laws and regulations?
- Question 13: If a sponsor chooses to conduct a foreign clinical study under an IND and the investigators at the non-U.S. sites follow the recommendations in the [International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use] ICH E6 Good Clinical Practice Consolidated Guidance, would the non-U.S. investigators also be in compliance with FDA's IND requirements under 21 CFR part 312?

The above questions now include reference to the Form FDA 1572 waiver process. Further, the draft guidance proposes the addition of a new section describing the Agency's current thinking regarding the Form FDA 1572 signature waiver process. The new section is entitled ''Section #9: Form FDA 1572 Signature Waiver.'' This new section outlines the process for submitting requests to FDA for waivers from the Form FDA 1572 signature requirements when investigators cannot or will not sign the Form FDA 1572 for clinical studies conducted in foreign countries, and the sponsor wishes to conduct the study at the foreign sites under an IND. The new section also provides information regarding the documentation that may be included in the 1572 signature waiver request.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). Based on the comments received to the docket, we intend to revise the Form FDA 1572 FAQ Guidance to amend our responses to questions (such as general questions 10, 11, and 13) from that document and to include a new section (see questions 39 through 46 of the draft guidance) about waivers of the Form FDA 1572 signature requirement, the subjects addressed in this draft guidance. This draft guidance is not intended to be finalized as a separate guidance document but will be consolidated with the Form FDA 1572 Guidance and issued as one comprehensive guidance. When finalized, the consolidated guidance will represent the current thinking of FDA on ''Frequently Asked Questions—Statement of Investigator (Form FDA 1572) (Revision 1).'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: May 14, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–10612 Filed 5–19–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medical Reserve Corps Request for Information

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The American Rescue Plan provides $100 million to the Medical Reserve Corps (MRC) program. To inform a strategic and impactful plan for execution of this funding, HHS is issuing this Request for Information (RFI). The RFI solicits specific input regarding current strengths and needs of MRC units and stakeholders, resource gaps highlighted during the COVID–19 response, and recommendations for short- and long-term priorities for the MRC. The set of questions is available in the **SUPPLEMENTARY INFORMATION** section below.

DATES: To be considered, public comments must be received electronically no later than midnight eastern standard time (EST) 30 days after posting.

ADDRESSES: Public comments should be submitted online at *http://www.regulations.gov.* All submissions must be submitted to the Docket named HHS–ASPR–2021–0013 to ''Request for Information (RFI) from Non-Federal Stakeholders: Advancing the Medical Reserve Corps with the American Rescue Plan.'' Comments submitted electronically, including attachments, will be posted to the docket unchanged and available to view by the public. Evidence and information supporting your comment can be submitted as attachments. Please provide your contact information or organization name on the web-based form for possible follow up from HHS. There is a 5,000 character limit on comments and maximum number (10) of attached files and maximum size (10 MB) of each attached file.

FOR FURTHER INFORMATION CONTACT: Esmeralda Pereira, MSPH, Director, Medical Reserve Corps Program, Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services, Washington, DC, (202) 205–0065 or *esmeralda.pereira@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Volunteer Medical Reserve Corps is authorized by Section 2813 of the Public Health Service Act [42 U.S.C. 300hh–15]. The MRC program supports a national network of over 200,000

volunteers organized into approximately 760 local community-based units. MRC units are committed to improving local emergency response capabilities, reducing vulnerabilities, and building community preparedness and resilience. More than 500 MRC units in 48 states, the District of Columbia, Puerto Rico, American Samoa, and the Northern Mariana Islands have bolstered local emergency response capabilities and served as critical medical and public health response assets during the COVID–19 pandemic.

The American Rescue Plan provides an unprecedented opportunity to invest in and advance the Medical Reserve Corps. The RFI seeks public input on the current strengths and needs of MRC units and stakeholders, resource gaps highlighted during the COVID–19 response, and recommendations for short- and long-term priorities for the MRC. Responses may address one or more of the areas below:

1. What do you see as the top strengths of the Medical Reserve Corps? Has the COVID–19 pandemic highlighted new or different strengths of the MRC?

2. What do you see as the top needs or resource gaps of the MRC? Has the COVID–19 pandemic highlighted new or different needs of the MRC?

3. Do you have recommendations on the top short- and long-term priorities for the MRC? What operational capabilities, services, or competencies would you propose that the MRC focus on? Do you have recommendations on ways to strengthening the MRC's role as a federal disaster response asset?

4. Any additional topics you wish to provide input on.

The information received will inform the planning for executing the American Rescue Plan funding.

Nikki Bratcher-Bowman,

Acting Assistant Secretary for Preparedness and Response.

[FR Doc. 2021–10618 Filed 5–19–21; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Purchased/Referred Care Delivery Area Redesignation for the Northwestern Band of the Shoshone Nation

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Final notice.

SUMMARY: Notice is hereby given that the Indian Health Service has decided to expand the geographic boundaries of the Purchased/Referred Care (PRC) Delivery Area for the Northwestern Band of the Shoshone Nation (NWBSN) in the State of Utah to include the Utah counties of Davis, Salt Lake, and Weber. The final PRC delivery area for the NWBSN is Box Elder County, Davis, Salt Lake, and Weber counties in the State of Utah. The sole purpose of this expansion is to authorize NWBSN to cover additional Tribal members and beneficiaries to receive PRC services.

DATES: This expansion is applicable as of the publication date of this notice.

ADDRESSES: This notice can be found at *https://www.federalregister.gov.* Written requests for information should be delivered to: CAPT John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop 10E85C, Rockville, MD 20857, (301) 443–0609 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The IHS currently provides services under regulations in effect on September 15, 1987, and republished in the Code of Federal Regulations (CFR) at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a Purchased/Referred Care delivery area (PRCDA), as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the area. Residence in a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC but only potential eligibility for services. Services needed but not available at an IHS or Tribal facility are provided under the PRC program depending on the availability of funds, the relative medical priority of the services to be provided, and the actual availability and accessibility of alternate resources in accordance with the regulations.

As applicable to the Tribes, these regulations provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22(a)(6)). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may from time to time, redesignate areas within the United States (U.S.) for inclusion in or exclusion from a PRCDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria areas follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of PRC, 42 CFR 136.22(b),

Additionally, the regulations require that any redesignation of a PRCDA must be made in accordance with the Administrative Procedures Act (5 U.S.C. 553). In compliance with this requirement, IHS published a proposed notice of redesignation and requested public comments on July 10, 2020 (85 FR 41597). No comments were received.

In support of this expansion, IHS adopts the following findings of the NWBSN, which had requested that IHS expand the NWBSN PRCDA to include Davis, Salt Lake, and Weber Counties in the State of Utah:

1. By expanding, the IHS estimates the current eligible population will be increased by 171.

2. The NWBSN has determined that these 171 individuals are members of the NWBSN and they are socially and economically affiliated with the NWBSN.

3. The expanded area including Davis, Salt Lake, and Weber Counties in the State of Utah maintain a boundary on or near the current Box Elder County, Utah PRCDA.

4. The NWBSN will use its existing Federal allocation for PRC funds to provide services to the expanded population. No additional financial resources will be allocated by IHS to the NWBSN to provide services to NWBSN members residing in Davis, Salt Lake, and Weber counties in the State of Utah.

Public Comments: IHS did not receive any public comments in response to the proposed notice of redesignation.

Tribe/reservation	County/state
Ak Chin Indian Community	Pinal, AZ.
Alabama-Coushatta Tribes of Texas	Polk, TX.[1]
Alaska	Entire State.[2]
Arapahoe Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Aroostook Band of Micmacs	Aroostook, ME.[3]
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Ashland, WI, Iron, WI.
Bay Mills Indian Community, Michigan	Chippewa, MI.
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Glacier, MT, Pondera, MT.
Brigham City Intermountain School Health Center, Utah	[4] Permanently closed on May 17, 1984.
Burns Paiute Tribe	Harney, OR.
California	Entire State, except for the counties listed in the footnote.[5]
Catawba Indian Nation (AKA Catawba Tribe of South Carolina)	All Counties in SC,[6] Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC.
Cayuga Nation	Alleghany, NY,[7] Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Chickahominy Indian Tribe	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[8]
Chickahominy Indian Tribe—Eastern Division	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[9]
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana	Chouteau, MT, Hill, MT, Liberty, MT.
Chitimacha Tribe of Louisiana	St. Mary Parish, LA.
Cocopah Tribe of Arizona	Yuma, AZ, Imperial, CA.
Coeur D'Alene Tribe	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ.
Confederated Salish and Kootenai Tribes of the Flathead Reservation	Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT.
Confederated Tribes and Bands of the Yakama Nation	Klickitat, WA, Lewis, WA, Skamania, WA,[10] Yakima, WA.
Confederated Tribes of Siletz Indians of Oregon	Benton, OR,[11] Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Chehalis Reservation	Grays Harbor, WA, Lewis, WA, Thurston, WA.
Confederated Tribes of the Colville Reservation	Chelan, WA,[12] Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians	Coos, OR,[13] Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR.
Confederated Tribes of the Goshute Reservation, Nevada and Utah	The entire State of Nevada, Juab, UT, Toole, UT.
Confederated Tribes of the Grand Ronde Community of Oregon	Marion, OR, Multnomah, OR, Polk, OR,[14] Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Umatilla Indian Reservation	Umatilla, OR, Union, OR.
Confederated Tribes of the Warm Springs Reservation of Oregon	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Coquille Indian Tribe	Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR.
Coushatta Tribe of Louisiana	Allen Parish, LA, the city limits of Elton, LA.[15]
Cow Creek Band of Umpqua Tribe of Indians	Coos, OR,[16] Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR.
Cowlitz Indian Tribe	Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Peirce, WA, Skamania, WA, Thurston, WA, Columbia, OR,[17] Kittitas, WA, Wahkiakum, WA.
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Crow Tribe of Montana	Big Horn, MT, Carbon, MT, Treasure, MT,[18] Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Eastern Band of Cherokee Indians	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Flandreau Santee Sioux Tribe of South Dakota	Moody, SD.
Forest County Potawatomi Community, Wisconsin	Forest, WI, Marinette, WI, Oconto, WI.
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Blaine, MT, Phillips, MT.
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	The entire State of Nevada, Malheur, OR.
Fort McDowell Yavapai Nation, Arizona	Maricopa, AZ.
Fort Mojave Indian Tribe of Arizona, California and Nevada	The entire State of Nevada, Mohave, AZ, San Bernardino, CA.
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Maricopa, AZ, Pinal, AZ.
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Antrim, MI,[19] Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI.
Hannahville Indian Community, Michigan	Delta, MI, Menominee, MI.
Haskell Indian Health Center	Douglas, KS [20].
Havasupai Tribe of the Havasupai Reservation, Arizona	Coconino, AZ, Mohave, A.[21]
Ho-Chunk Nation of Wisconsin	Adams, WI,[22]Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI.
Hoh Indian Tribe	Jefferson, WA.

Tribe/reservation	County/state
Hopi Tribe of Arizona	Apache, AZ, Coconino, AZ, Navajo, AZ.
Houlton Band of Maliseet Indians	Aroostook, ME.[23]
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Iowa Tribe of Kansas and Nebraska	Brown, KS, Doniphan, KS, Richardson, NE.
Jamestown S'Klallam Tribe	Clallam, WA, Jefferson, WA.
Jena Band of Choctaw Indians	Grand Parish, LA,[24] LaSalle Parish, LA, Rapides, LA.
Jicarilla Apache Nation, New Mexico	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel Indian Community of the Kalispel Reservation	Pend Oreille, WA, Spokane, WA.
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo).	Sandoval, NM, Santa Fe, NM.
Keweenaw Bay Indian Community, Michigan	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo Traditional Tribe of Texas	Maverick, TX.[25]
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Brown, KS, Jackson, KS.
Klamath Tribes	Klamath, OR.[26]
Koi Nation of Northern California (formerly known as Lower Lake Rancheria, California).	Lake, CA, Sonoma, CA.[27]
Kootenai Tribe of Idaho	Boundary, ID.
Lac Courte Oreilles Band of Superior Chippewa Indians of Wisconsin	Sawyer, WI.
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.	Iron, WI, Oneida, WI, Vilas, WI.
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan	Gogebic, MI.
Little River Band of Ottawa Indians, Michigan	Kent, MI,[28] Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI.
Little Shell Tribe of Chippewa Indians of Montana	Blaine, MT, Cascade, MT, Glacier, MT, Hill, MT.[29]
Little Traverse Bay Bands of Odawa Indians, Michigan	Alcona, MI,[30] Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI.
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha Tribal Community	Clallam, WA.
Lower Sioux Indian Community in the State of Minnesota	Redwood, MN, Renville, MN.
Lummi Tribe of the Lummi Reservation	Whatcom, WA.
Makah Indian Tribe of the Makah Indian Reservation	Clallam, WA.
Mashantucket Pequot Indian Tribe	New London, CT.[31]
Mashpee Wampanoag Tribe	Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[32]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan	Allegan, MI,[33] Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Menominee Indian Tribe of Wisconsin	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI.
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Chaves, NM, Lincoln, NM, Otero, NM.
Miccosukee Tribe of Indians	Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL.
Minnesota Chippewa Tribe, Minnesota, Bois Forte Band (Nett Lake)	Itasca, MN, Koochiching, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Fond du Lac Band	Carlton, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Grand Portage Band	Cook, MN.
Minnesota Chippewa Tribe, Minnesota, Leech Lake Band	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Minnesota Chippewa Tribe, Minnesota, Mille Lacs Band	Aitkin, MN, Crow Wing, MN,[34] Kanebec, MN, Mille Lacs, MN, Morrison, MN,[35] Pine, MN.
Minnesota Chippewa Tribe, Minnesota, White Earth Band	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
Mississippi Band of Choctaw Indians	Attala, MS, Jasper, MS,[36] Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS,[37] Scott, MS,[38] Winston, MS.
Mohegan Tribe of Indians of Connecticut	Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT.
Monacan Indian Nation	Amherst, VA, Nelson, VA, Albemarle, VA, Buckingham, VA, Appomattox, VA, Campbell, VA, Bedford, VA, Botetourt, VA, Rockbridge, VA, Augusta, VA, and the independent cities of Lynchburg, VA, Lexington, VA, Buena Vista, VA, Staunton, VA, Waynesboro, VA, and Charlottesville, VA.[39]
Muckleshoot Indian Tribe	King, WA, Pierce, WA.
Nansemond Indian Tribe	The independent cities of Chesapeake, VA, Hampton, VA, Newport News, VA, Norfolk, VA, Portsmouth, VA, Suffolk, VA, and Virginia Beach, VA.[40]
Narragansett Indian Tribe	Washington, RI.[41]
Navajo Nation, Arizona, New Mexico, & Utah	Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nevada	Entire State.[42]
Nez Perce Tribe	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually Indian Tribe	Pierce, WA, Thurston, WA.
Nooksack Indian Tribe	Whatcom, WA.

Tribe/reservation	County/state
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.	Big Horn, MT, Carter, MT,[43] Rosebud, MT.
Northwestern Band of Shoshone Nation	Box Elder, UT,[44] Davis, UT, Salt Lake, UT, Weber, UT.[45]
Nottawaseppi Huron Band of the Pottawatomi, Michigan	Allegan, MI,[46] Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Oglala Sioux Tribe	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD,[47] Mellette, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD.
Ohkay Owingeh, New Mexico	Rio Arriba, NM.
Oklahoma	Entire State.[48]
Omaha Tribe of Nebraska	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.
Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin).	Brown, WI, Outagamie, WI.
Oneida Indian Nation (previously listed as the Oneida Nation of New York).	Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY.
Onondaga Nation	Onondaga, NY.
Paiute Indian Tribe of Utah	Iron, UT,[49] Millard, UT, Sevier, UT, Washington, UT.
Pamunkey Indian Tribe	Caroline, VA, Hanover, VA, Henrico, VA, King William, VA, King and Queen, VA, New Kent, VA, and the independent city of Richmond, VA.[50]
Pascua Yaqui Tribe of Arizona	Pima, AZ.[51]
Passamaquoddy Tribe	Aroostook, ME,[52] [53] Hancock, ME,[54] Washington, ME.
Penobscot Nation	Aroostook, ME,[55] Penobscot, ME.
Poarch Band of Creeks	Baldwin, AL,[56] Elmore, AL, Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL.
Pokagon Band of Pottawatomi Indians, Michigan and Indiana	Allegan, MI,[57] Berrien, MI, Cass, MI, Elkhart, IN, Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI.
Ponca Tribe of Nebraska	Boyd, NE,[58] Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawatomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA.
Port Gamble S'Klallam Tribe	Kitsap, WA.
Prairie Band of Pottawatomi Nation	Jackson, KS.
Prairie Island Indian Community in the State of Minnesota	Goodhue, MN.
Pueblo of Acoma, New Mexico	Cibola, NM.
Pueblo of Cochiti, New Mexico	Sandoval, NM, Santa Fe, NM.
Pueblo of Isleta, New Mexico	Bernalillo, NM, Torrance, NM, Valencia, NM.
Pueblo of Jemez, New Mexico	Sandoval, NM.
Pueblo of Laguna, New Mexico	Bernalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM.
Pueblo of Nambe, New Mexico	Santa Fe, NM.
Pueblo of Picuris, New Mexico	Taos, NM.
Pueblo of Pojoaque, New Mexico	Rio Arriba, NM, Santa Fe, NM.
Pueblo of San Felipe, New Mexico	Sandoval, NM.
Pueblo of San Ildefonso, New Mexico	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Sandia, New Mexico	Bernalillo, NM, Sandoval, NM.
Pueblo of Santa Ana, New Mexico	Sandoval, NM.
Pueblo of Santa Clara, New Mexico	Los Alamos, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Taos, New Mexico	Colfax, NM, Taos, NM.
Pueblo of Tesuque, Mexico	Santa Fe, NM.
Pueblo of Zia, New Mexico	Sandoval, NM.
Puyallup Tribe of the Puyallup Reservation	King, WA, Pierce, WA, Thurston, WA.
Quechan Tribe of the Fort Yuma Indian Reservation, Arizona and California.	Yuma, AZ, Imperial, CA.
Quileute Tribe of the Quileute Reservation	Clallam, WA, Jefferson, WA.
Quinault Indian Nation	Grays Harbor, WA, Jefferson, WA.
Rapid City, South Dakota	Pennington, SD.[59]
Rappahannock Tribe, Inc.	King and Queen County, VA, Caroline County, VA, Essex County, VA, King William County, VA[60].
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Bayfield, WI.
Red Lake Band of Chippewa Indians, Minnesota	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota	Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD.
Sac & Fox Nation of Missouri in Kansas and Nebraska	Brown, KS, Richardson, NE.
Sac & Fox Tribe of the Mississippi in Iowa	Tama, IA.
Saginaw Chippewa Indian Tribe of Michigan	Arenac, MI,[61] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI.
Saint Regis Mohawk Tribe	Franklin, NY, St. Lawrence, NY.
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.	Maricopa, AZ.
Samish Indian Nation	Clallam, WA,[62] Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA.
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.

Tribe/reservation	County/state
San Juan Southern Paiute Tribe of Arizona	Coconino, AZ, San Juan, UT.
Santee Sioux Nation, Nebraska	Bon Homme, SD, Knox, NE.
Sauk-Suiattle Indian Tribe	Snohomish, WA, Skagit, WA.
Sault Ste. Marie Tribe of Chippewa Indians, Michigan	Alger, MI,[63] Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI.
Seminole Tribe of Florida	Broward, FL, Collier, FL, Miami-Dade, FL, Glades, FL, Hendry, FL.
Seneca Nation of Indians	Alleghany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Shakopee Mdewakanton Sioux Community of Minnesota	Scott, MN.
Shinnecock Indian Nation	Nassau, NY,[64] Suffolk, NY.
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation	Pacific, WA.
Shoshone-Bannock Tribes of the Fort Hall Reservation	Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID,[65] Power, ID.
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	The entire state of Nevada, Owyhee, ID.
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.
Skokomish Indian Tribe	Mason, WA.
Skull Valley Band of Goshute Indians of Utah	Tooele, UT.
Snoqualmie Indian Tribe	King, WA,[66] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA.
Sokaogon Chippewa Community, Wisconsin	Forest, WI.
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spirit Lake Tribe, North Dakota	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Spokane Tribe of the Spokane Reservation	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island Tribe of the Squaxin Island Reservation	Mason, WA.
St. Croix Chippewa Indians of Wisconsin	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.
Standing Rock Sioux Tribe of North & South Dakota	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stillaguamish Tribe of Indians of Washington	Snohomish, WA.
Stockbridge Munsee Community, Wisconsin	Menominee, WI, Shawano, WI.
Suquamish Indian Tribe of the Port Madison Reservation	Kitsap, WA.
Swinomish Indian Tribal Community	Skagit, WA.
Tejon Indian Tribe	The State of California including Kern, CA.[67]
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Tohono O'odham Nation of Arizona	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Tolowa Dee-ni' Nation (formerly known as Smith River Rancheria of California).	California, Curry, OR[68].
Tonawanda Band of Seneca	Genesee, NY, Erie, NY, Niagara, NY.
Tonto Apache Tribe of Arizona	Gila, AZ.
Trenton Service Unit, North Dakota and Montana	Divide, ND,[69] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT.
Tulalip Tribes of Washington	Snohomish, WA.
Tunica-Biloxi Indian Tribe	Avoyelles, LA, Rapides, LA.[70]
Turtle Mountain Band of Chippewa Indians of North Dakota	Rolette, ND.
Tuscarora Nation	Niagara, NY.
Upper Mattaponi Tribe	Caroline, VA, Charles City, VA, Essex, VA, Hanover, VA, Henrico, VA, James City, VA, King and Queen, VA, King William, VA, Middlesex, VA, New Kent, VA, Richmond, VA, and the independent city of Richmond, VA.[71]
Upper Sioux Community, Minnesota	Chippewa, MN, Yellow Medicine, MN.
Upper Skagit Indian Tribe	Skagit, WA.
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT.
Ute Mountain Ute Tribe	Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT.
Wampanoag Tribe of Gay Head (Aquinnah)	Dukes, MA,[72] Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[73]
Washoe Tribe of Nevada & California	The State of Nevada, The State of California except for the counties listed in footnote.
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Wilton Rancheria, California	The State of California including Sacramento, CA.[74]
Winnebago Tribe of Nebraska	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.
Yankton Sioux Tribe of South Dakota	Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE.
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.	Yavapai, AZ.
Yavapai-Prescott Indian Tribe	Yavapai, AZ.
Ysleta Del Sur Pueblo of Texas	El Paso, TX.[75]
Zuni Tribe of the Zuni Reservation, New Mexico	Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM.

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).
[3] Aroostook Band of Micmacs was recognized by Congress on November 26, 1991, through the Aroostook Band of Micmac Settlement Act. Aroostook County, ME, was defined as the SDA.
[4] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Brigham City Intermountain School Health Center, Utah (Pub. L. 88–358).
[5] Entire State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).
[6] The counties were recognized after the January 1984 CHSDA FRN was published, in accordance with Public Law 103–116, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, dated October 27, 1993.
[7] There is no reservation for the Cayuga Nation; the service delivery area consists of those counties identified by the Cayuga Nation.
[8] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.
[9] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe—Eastern Division as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.
[10] Skamania County, WA, has historically been a part of the Yakama Service Unit population since 1979.
[11] In order to carry out the Congressional intent of the Siletz Restoration Act, Public Law 95–195, as expressed in H. Report No. 95–623, at page 4, members of the Confederated Tribes of Siletz Indians of Oregon residing in these counties are eligible for contract health services.
[12] Chelan County, WA, has historically been a part of the Colville Service Unit population since 1970.
[13] Pursuant to Public Law 98–481 (H. Rept. No. 98–904), Coos, Lower Umpqua and Siuslaw Restoration Act, members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation.
[14] The Confederated Tribes of Grand Ronde Community of Oregon were recognized by Public Law 98–165 which was signed into law on November 22, 1983, and provides for eligibility in these six counties without regard to the existence of a reservation.
[15] The CHSDA for the Coushatta Tribe of Louisiana was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include city limits of Elton, LA.
[16] Cow Creek Band of Umpqua Tribe of Indians recognized by Public Law 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later administratively expanded the CHSDA to include the counties of Coos, OR, Deschutes, OR, Klamath, OR, and Lane, OR.
[17] The Cowlitz Indian Tribe was recognized in July 2002 as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638. The CHSDA was administratively expanded to included Columbia County, OR, Kittitas, WA, and Wahkiakum County, WA, as published at 67884 FR December 21, 2009.
[18] Treasure County, MT, has historically been a part of the Crow Service Unit population.
[19] The counties listed have historically been a part of the Grand Traverse Service Unit population since 1980.
[20] Haskell Indian Health Center has historically been a part of Kansas Service Unit since 1979. Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Haskell Indian Health Center (H. Rept. No. 95–392).
[21] The PRCDA for the Havasupai Tribe of Arizona was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include Mohave County in the State of Arizona.
[22] CHSDA counties for the Ho-Chunk Nation of Wisconsin were designated by regulation (42 CFR 136.22(a)(5)). Dane County, WI, was added to the reservation by the Bureau of Indian Affairs in 1986.
[23] Public Law 97–428 provides that any member of the Houlton Band of Maliseet Indians in or around the Town of Houlton shall be eligible without regard to existence of a reservation.
[24] The Jena Band of Choctaw Indian was Federally acknowledged as documented at 60 FR 28480, May 31, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.
[25] Kickapoo Traditional Tribe of Texas, formerly known as the Texas Band of Kickapoo, was recognized by Public Law 97–429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.
[26] The Klamath Indian Tribe Restoration Act (Pub. L. 99–398, Sec. 2(2)) states that for the purpose of Federal services and benefits ''members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation''.
[27] The Koi Nation of Northern California, formerly known as the Lower Lake Rancheria, was reaffirmed by the Secretary of the Bureau of Indian Affairs on December 29, 2000. The counties listed were designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.
[28] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4(b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.
[29] In Public Law 116–92, that became law on December 20, 2019, Congress federally recognized the Little Shell Tribe of Chippewa Indians of Montana. Consistent with Public Law 116–92, the IHS designated the counties as the PRCDA for the Little Shell Tribe of Chippewa Indians of Montana.
[30] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4(b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.
[31] Mashantucket Pequot Indian Claims Settlement Act, Public Law 98–134, signed into law on October 18, 1983, provides a reservation for the Mashantucket Pequot Indian Tribe in New London County, CT.
[32] The Mashpee Wampanoag Tribe was recognized in February 2007, as documented at 72 FR 8007, February 22, 2007. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.
[33] The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan was recognized in October 1998, as documented at 63 FR 56936, October 23, 1998. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.
[34] The PRCDA for the Mille Lacs Band of Ojibwe was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include the counties of Crow Wing and Morrison in the State of Minnesota.
[35] The PRCDA for the Mille Lacs Band of Ojibwe was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include the counties of Crow Wing and Morrison in the State of Minnesota.
[36] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.
[37] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.
[38] Scott County, MS, has historically been a part of the Choctaw Service Unit population since 1970.

[39] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Monacan Indian Nation as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[40] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Nansemond Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[41] The Narragansett Indian Tribe was recognized by Public Law 95–395, signed into law September 30, 1978. Lands in Washington County, RI, are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[42] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22(a)(2)).

[43] Carter County, MT, has historically been a part of the Northern Cheyenne Service Unit population since 1979.

[44] Land of Box Elder County, Utah, was taken into trust for the Northwestern Band of Shoshone Nation in 1986.

[45] The PRCDA for the Northwestern Band of Shoshone Nation was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include the counties of Davis, Salt Lake, and Weber, in the State of Utah.

[46] The Nottawaseppi Huron Band of the Potawatomi, Michigan, formerly known as the Huron Band of Potawatomi, Inc., was recognized in December 1995, as documented at 60 FR 66315, December 21, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[47] Washabaugh County, SD, merged and became part of Jackson County, SD, in 1983; both were/are CHSDA counties for the Oglala Sioux Tribe.

[48] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22(a)(3)).

[49] Paiute Indian Tribe of Utah Restoration Act, Public Law 96–227, provides for the extension of services for the Paiute Indian Tribe of Utah to these four counties without regard to the existence of a reservation.

[50] In the **Federal Register** on July 8, 2015 (80 FR 39144), the Pamunkey Indian Tribe was officially recognized as an Indian Tribe within the meaning of Federal law. The counties listed were designated administratively as the PRCDA, for the purposes of operating a PRC program.

[51] Legislative history (H.R. Report No. 95–1021) to Public Law 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Pascua Yaqui Tribe of Arizona pursuant to Act of October 8, 1964 (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[52] The Maine Indian Claims Settlement Act of 1980 (Public Law 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide contract health services to the Passamaquoddy Tribe and the Penobscot Nation.

[53] The Passamaquoddy Tribe has two reservations: Indian Township and Pleasant Point. The PRCDA for the Passamaquoddy Tribe at Indian Township, ME, is Aroostook County, ME, Washington County, ME, and Hancock County, ME. The PRCDA for the Passamaquoddy Tribe at Pleasant Point, ME, is Washington County, ME, south of State Route 9, and Aroostook County, ME.

[54] The Passamaquoddy Tribe's counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[55] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide PRC to the Passamaquoddy Tribe and the Penobscot Nation.

[56] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[57] Public Law 103–323 restored Federal recognition to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, in 1994 and identified counties to serve as the SDA.

[58] The Ponca Restoration Act, Public Law 101–484, recognized members of the Ponca Tribe of Nebraska in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota as residing on or near a reservation. Public Law 104–109 made technical corrections to laws relating to Native Americans and added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawatomie and Woodbury counties of Iowa to the Ponca Tribe of Nebraska SDA.

[59] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations. Historically services have been provided at Rapid City (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

[60] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Rappahannock Tribe, Inc. as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[61] Historically part of Isabella Reservation Area for the Saginaw Chippewa Indian Tribe of Michigan and the Eastern Michigan Service Unit population since 1979.

[62] The Samish Indian Tribe Nation was Federally acknowledged in April 1996 as documented at 61 FR 15825, April 9, 1996. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[63] CHSDA counties for the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, were designated by regulation (42 CFR 136.22(a)(4)).

[64] The Shinnecock Indian Nation was Federally acknowledged in June 2010 as documented at 75 FR 34760, June 18, 2010. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[65] Lemhi County, ID, has historically been a part of the Fort Hall Service Unit population since 1979.

[66] The Snoqualmie Indian Tribe was Federally acknowledged in August 1997 as documented at 62 FR 45864, August 29, 1997. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[67] On December 30, 2011 the Office of Assistant Secretary—Indian Affairs reaffirmed the Federal recognition of the Tejon Indian Tribe. Kern County, CA, was designated administratively as part of the Tribe's CHSDA in addition to the CHSDA established by Congress for the State of California. Kern County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[68] The counties listed are designated administratively as the SDA, to function as a PRC SDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[69] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Unit, North Dakota and Montana, in Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[70] Rapides County, LA, has historically been a part of the Tunica Biloxi Service Unit population since 1982.

[71] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Upper Mattaponi Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[72] According to Public Law 100–95, Sec. 12, members of the Wampanoag Tribe of Gay Head (Aquinnah) residing on Martha's Vineyard are deemed to be living on or near an Indian reservation for the purposes of eligibility for Federal services.

[73] The counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[74] The Wilton Rancheria, California had Federal recognition restored in July 2009 as documented at 74 FR 33468, July 13, 2009. Sacramento County, CA, was designated administratively as part of the Rancheria's CHSDA in addition to the CHSDA established by Congress for the State of California. Sacramento County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[75] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for ''members of the Tribe'' by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2021–10661 Filed 5–19–21; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Initiative: Pain Therapeutics Development (Small Molecules and Biologics).

Date: June 14, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Blueprint Neurotherapeutics Network Small Molecule Drug Discovery for Disorders of the Nervous System.

Date: June 18, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard Rockville, MD 20852 (Virtual Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Rockville, MD 20852, (301) 496–9223, *joel.saydoff@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B (NSD–B) Study Section.

Date: June 24–25, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Rockville, MD 20852, (301) 496–9223 *joel.saydoff@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 14, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10625 Filed 5–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: July 14, 2021.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Sheila A. Prindiville, MD, M.P.H., Director, Coordinating Center for Clinical Trials, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 17, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10678 Filed 5–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIH)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review

and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Tawanda Abdelmouti, Assistant Project Officer, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892 or call non-toll-free number (301) 435–0978 or email your request, including your address to: *abdelmot@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on January 21, 2021, page 6355 (86 FR 6355) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. National Institutes of Health (NIH), may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, EXTENSION, 0925–0648, expiration date 05/31/2021, National Institutes of Health (NIH).

Need and Use of Information Collection: There are no changes being requested for this submission. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This generic will provide information about the NIH Institutes and Centers customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 49,333.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Customer Satisfaction Surveys	1,000	1	30/60	500
In-Depth Interviews (IDIs) or Small Discussion Groups	1,000	1	90/60	1,500
Focus Groups	1,000	1	90/60	1,500
Usability and Pilot Testing	150,000	1	5/60	12,500
Conference/Training—Pre-and Post-Surveys	100,000	2	10/60	33,333
Total	253,000	353,000	.....	49,333

Dated: May 13, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–10665 Filed 5–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel: Fellowship and Career Development.

Date: June 4, 2021.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 17, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10684 Filed 5–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Nutrition for Precision Health, powered by the All of Us Research Program: Microbiome and Metagenomics Center (U24).

Date: June 16, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov.*

Name of Committee: Biobehavioral and Behavioral Processes, Integrated Review Group Child Psychopathology and Developmental Disabilities Study Section.

Date: June 17–18, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine Colona Morasch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, *moraschkc@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group Social Sciences and Population Studies B Study Section.

Date: June 17–18, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group Hemostasis, Thrombosis, Blood Cells and Transfusion Study Section.

Date: June 17–18, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, M.D. Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Musculoskeletal, Orthopedic, Oral, Rehabilitation and Dermatology.

Date: June 21–23, 2021.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 14, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10627 Filed 5–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Translational Neural, Brain, and Pain Relief Devices

Date: June 21, 2021.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Diana M. Cummings, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Neurological Disorders and Stroke, NIH NSC, 6001 Executive Blvd., Suite 3208, Rockville, MD 20852, *cummingsdi@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 14, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10624 Filed 5–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Coccidioidomycosis Collaborative Research Centers (U19 Clinical Trial Not Allowed).

Date: June 23–25, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–10626 Filed 5–19–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2021–N158; FF09E20000 FXES1111090FEDR 212; OMB Control Number 1018–0119]

Agency Information Collection Activities; Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 19, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0119 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 4 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) outlines the process by which we can list a species as a threatened species or an endangered species. When we consider whether to list a species, the ESA requires us to take into account the efforts made by any State or any political subdivision of a State to protect such species. We also take into account the efforts made by other entities. States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or similar documents. The conservation efforts recommended or described in such documents could prevent some species from becoming so imperiled that they meet the definition of a threatened species or an endangered species under the ESA.

The Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100, March 28, 2003) encourages the development of conservation agreements or plans and provides the standard that an individual conservation effort must meet in order for us to consider whether it is likely to make a difference in a species' status. PECE applies to formalized conservation efforts that have not been implemented or have been implemented but have not yet demonstrated if they are effective at the time of a listing decision.

Under PECE, formalized conservation efforts are defined as conservation efforts (specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species) identified in a conservation agreement, conservation plan, management plan, or similar document. To assist us in evaluating whether a formalized conservation effort meets the standard under PECE, we collect information such as conservation plans, monitoring results, and progress reports. The development of any agreement or plan is voluntary. The PECE is posted on our Candidate Conservation website at *http://www.fws.gov/endangered/esa-library/pdf/PECE-final.pdf.*

Title of Collection: Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).

OMB Control Number: 1018–0119.

Form Number: None.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Primarily State, local, or Tribal governments. However, individuals, businesses, and not-for-profit organizations also could develop agreements/plans or may agree to implement certain conservation efforts identified in a State agreement or plan.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated number of annual respondents	Average number of submissions each	Estimated number of annual responses	Completion time per response (hours)	Estimated annual burden hours
PECE—Reporting					
Individuals	1	1	1	120	120
Private Sector	1	1	1	120	120
Government	5	1	5	120	600
PECE—Monitoring					
Individuals	1	1	1	600	600
Private Sector	1	1	1	600	600
Government	5	1	5	600	3,000
PECE—Development of Conservation Plan/Agreement (One-time Burden)					
Individuals	1	1	1	2,000	2,000
Private Sector	1	1	1	2,000	2,000
Government	2	1	2	2,000	4,000
TOTALS:	18		18		13,040

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.*).

Dated: May 17, 2021.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–10609 Filed 5–19–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N141; FXES11130800000–212–FF08E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 76 Species in California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 76 species in California and Nevada under the Endangered Species Act. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than July 19, 2021. However, we will continue to accept new information about any species at any time.

ADDRESSES: For how and where to send information and comments, see Request for New Information. For whom to contact for species-specific information, see Request for New Information. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year reviews?

Under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species (referred to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. For additional information about 5-year reviews, refer to our factsheet at *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

What information do we consider in our review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented to benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

Which species are under review?

This notice announces our active review of the species listed in the table below.

Common name	Scientific name	Status	States where species is known to occur	Final Listing rule (**Federal Register** citation and publication date)	Lead fish and wildlife office
Animals					
Butterfly, Quino checkerspot	*Euphydryas editha quino (=E. e. wrighti).*	E	CA, Mexico	62 FR 2313; 1/16/1997	Carlsbad.
Fox, Santa Catalina Island	*Urocyon littoralis catalinae*	T	CA	69 FR 10335; 3/5/2004	Carlsbad.
Lizard, Coachella Valley fringe-toed.	*Uma inornata*	T	CA	45 FR 63812; 9/25/1980	Carlsbad.
Sucker, Santa Ana	*Catostomus santaanae*	T	CA	65 FR 19686; 4/12/2000	Carlsbad.
Vireo, least Bell's	*Vireo bellii pusillus*	E	CA, Mexico	51 FR 16474; 5/2/1986	Carlsbad.
Vole, Amargosa	*Microtus californicus scirpensis*	E	CA	49 FR 45160; 11/15/1984	Carlsbad.
Condor, California	*Gymnogyps californianus*	E	AZ, CA, NV, and UT.	32 FR 4001; 3/11/1967	Hopper Mountain National Wildlife Refuge.
Chub, Owens Tui	*Gila bicolor snyderi*	E	CA	50 FR 31592; 8/5/1985	Reno.
Dace, desert	*Eremichthys acros*	T	NV	32 FR 4001; 3/11/1967	Reno.
Pupfish, Owens	*Cyprinodon radiosus*	E	CA	32 FR 4001; 3/11/1967	Reno.
Speckled dace, Clover Valley	*Rhinichthys osculus oligoporus*	E	NV	54 FR 41448; 10/10/1989	Reno.
Speckled dace, Independence Valley.	*Rhinichthys osculus lethoporus*	E	NV	54 FR 41448; 10/10/1989	Reno.
Crayfish, Shasta	*Pacifastacus fortis*	E	CA	53 FR 38460; 9/30/1988	Sacramento.
Fairy shrimp, Conservancy	*Branchinecta conservatio*	E	CA	59 FR 48136; 9/19/1994	Sacramento.
Fairy shrimp, longhorn	*Branchinecta longiantenna*	E	CA	59 FR 48136; 9/19/1994	Sacramento.
Fairy shrimp, vernal pool	*Branchinecta lynchi*	T	CA	59 FR 48136; 9/19/1994	Sacramento.
Shrimp, California freshwater	*Syncaris pacifica*	E	CA	53 FR 43884; 10/31/1988	Sacramento.
Tadpole shrimp, vernal pool	*Lepidurus packardi*	E	CA	59 FR 48136; 9/19/1994	Sacramento.
Trout, Little Kern golden	*Oncorhynchus aguabonita whitei.*	T	CA	43 FR 15427; 4/13/1978	Sacramento.
Butterfly, Mount Charleston blue.	*Icaricia (Plebejus) shasta charlestonensis.*	E	NV	78 FR 57749; 10/21/2013	Southern Nevada.
Chub, Pahranagat roundtail	*Gila robusta jordani*	E	NV	35 FR 16047; 10/13/1970	Southern Nevada.
Dace, Moapa	*Moapa coriacea*	E	NV	32 FR 4001; 3/11/1967	Southern Nevada.
Pupfish, Devils Hole	*Cyprinodon diabolis*	E	NV	32 FR 4001; 3/11/1967	Southern Nevada.
Springfish, Hiko White River	*Crenichthys baileyi grandis*	E	NV	50 FR 39123; 9/27/1985	Southern Nevada.
Springfish, White River	*Crenichthys baileyi baileyi*	E	NV	50 FR 39123; 9/27/1985	Southern Nevada.
Tortoise, desert	*Gopherus agassizii*	T	AZ, CA, NV, OR, and UT.	45 FR 55654; 8/20/1980	Southern Nevada.
Salamander, California tiger (Santa Barbara County distinct population segment).	*Ambystoma californiense*	E	CA	65 FR 3096; 1/19/2000	Ventura.
Plants					
Bladderpod, San Bernardino Mountains.	*Lesquerella kingii bernardina*	E	CA	59 FR 43652; 8/24/1994	Carlsbad.
Brodiaea, thread-leaved	*Brodiaea filifolia*	T	CA	63 FR 54975; 10/13/1998	Carlsbad.
Buckwheat, cushenbury	*Eriogonum ovalifolium vineum*	E	CA	59 FR 43652; 8/24/1994	Carlsbad.
Button-celery, San Diego	*Eryngium aristulatum parishii*	E	CA	58 FR 41384; 8/3/1993	Carlsbad.
Daisy, Parish's	*Erigeron parishii*	T	CA	59 FR 43652; 8/24/1994	Carlsbad.
Flannelbush, Mexican	*Fremontodendron mexicanum*	E	CA, Mexico	63 FR 54956; 10/13/1998	Carlsbad.
Manzanita, Del Mar	*Arctostaphylos glandulosa crassifolia.*	E	CA, Mexico	61 FR 52370; 10/7/1996	Carlsbad.
Mesa-mint, Otay	*Pogogyne nudiuscula*	E	CA, Mexico	58 FR 41384; 8/3/1993	Carlsbad.
Mesa-mint, San Diego	*Pogogyne abramsii*	E	CA	43 FR 44810; 10/29/1978	Carlsbad.
Milk-vetch, Coachella Valley	*Astragalus lentiginosus coachellae.*	E	CA	63 FR 53596; 10/6/1998	Carlsbad.
Milk-vetch, Cushenbury	*Astragalus albens*	E	CA	59 FR 43652; 8/24/1994	Carlsbad.
Milk-vetch, Lane Mountain	*Astragalus jaegerianus*	E	CA	63 FR 53596; 10/6/1998	Carlsbad.
Monardella, willowy	*Monardella viminea*	E	CA, Mexico	63 FR 54938; 10/13/1998	Carlsbad.
Navarretia, spreading	*Navarretia fossalis*	T	CA, Mexico	63 FR 54975; 10/13/1998	Carlsbad.
Onion, Munz's	*Allium munzii*	E	CA	63 FR 54975; 10/13/1998	Carlsbad.
Orcutt grass, California	*Orcuttia californica*	E	CA	58 FR 41384; 8/3/1993	Carlsbad.
Oxytheca, Cushenbury	*Oxytheca parishii goodmaniana.*	E	CA	59 FR 43652; 8/24/1994	Carlsbad.
Spineflower, slender-horned	*Dodecahema leptoceras*	E	CA	52 FR 36265; 9/28/1987	Carlsbad.
Tarplant, Otay	*Deinandra (=Hemizonia) conjugens.*	T	CA, Mexico	63 FR 54938; 10/13/1998	Carlsbad.
Thornmint, San Diego	*Acanthomintha ilicifolia*	T	CA, Mexico	63 FR 54938; 10/13/1998	Carlsbad.
Wild-buckwheat, Southern Mountain.	*Eriogonum kennedyi austromontanum.*	T	CA	63 FR 49006; 9/14/1998	Carlsbad.
Woolly-star, Santa Ana River	*Eriastrum densifolium sanctorum.*	E	CA	52 FR 36265; 9/28/1987	Carlsbad.
Milk-vetch, Fish Slough	*Astragalus lentiginosus piscinensis.*	T	CA	63 FR 53596; 10/6/1998	Reno.
Brodiaea, Chinese Camp	*Brodiaea pallida*	T	CA	63 FR 49022; 9/14/1998	Sacramento.
Buckwheat, Ione (incl. Irish Hill)	*Eriogonum apricum (incl. var. prostratum).*	E	CA	64 FR 28403; 5/26/1999	Sacramento.
Clarkia, Presidio	*Clarkia franciscana*	E	CA	60 FR 6671; 2/3/1995	Sacramento.
Clarkia, Springville	*Clarkia springvillensis*	T	CA	63 FR 49022; 9/14/1998	Sacramento.
Lessingia, San Francisco	*Lessingia germanorum* (=*L.g. var. germanorum*).	E	CA	62 FR 33368; 6/19/1997	Sacramento.
Manzanita, Franciscan	*Arctostaphylos franciscana*	E	CA	77 FR 54434; 9/5/2012	Sacramento.

Common name	Scientific name	Status	States where species is known to occur	Final Listing rule (**Federal Register** citation and publication date)	Lead fish and wildlife office
Manzanita, Ione	*Arctostaphylos myrtifolia*	T	CA	64 FR 28403; 5/26/1999	Sacramento.
Manzanita, pallid	*Arctostaphylos pallida*	T	CA	63 FR 19842; 4/22/1998	Sacramento.
Manzanita, Presidio	*Arctostaphylos hookeri ravenii*	E	CA	44 FR 61910; 10/26/1979	Sacramento.
Pussypaws, Mariposa	*Calyptridium pulchellum*	T	CA	63 FR 49022; 9/14/1998	Sacramento.
Sunburst, Hartweg's golden	*Pseudobahia bahiifolia*	E	CA	62 FR 5542; 2/6/1997	Sacramento.
Sunburst, San Joaquin adobe	*Pseudobahia peirsonii*	T	CA	62 FR 5542; 2/6/1997	Sacramento.
Vervain, Red Hills	*Verbena californica*	T	CA	63 FR 49022; 9/14/1998	Sacramento.
Bird's-beak, soft	*Cordylanthus mollis mollis*	E	CA	62 FR 61916; 11/20/1997	San Francisco Bay-Delta.
Thistle, Suisun	*Cirsium hydrophilum hydrophilum.*	E	CA	62 FR 61916; 11/20/1997	San Francisco Bay-Delta.
Barberry, island	*Berberis pinnata insularis*	E	CA	62 FR 40954; 7/31/1997	Ventura.
Fringepod, Santa Cruz Island	*Thysanocarpus conchuliferus*	E	CA	62 FR 40954; 7/31/1997	Ventura.
Gilia, Hoffmann's slender-flowered.	*Gilia tenuiflora hoffmannii*	E	CA	62 FR 40954; 7/31/1997	Ventura.
Manzanita, Morro	*Arctostaphylos morroensis*	T	CA	59 FR 64613; 12/15/1994	Ventura.
Milk-vetch, Braunton's	*Astragalus brauntonii*	E	CA	62 FR 4172; 1/29/1997	Ventura.
Milk-vetch, coastal dunes	*Astragalus tener titi*	E	CA	63 FR 43100; 8/12/1998	Ventura.
Rock-cress, Hoffmann's	*Arabis hoffmannii*	E	CA	62 FR 40954; 7/31/1997	Ventura.
Spineflower, Ben Lomond	*Chorizanthe pungens hartwegiana.*	E	CA	59 FR 5499; 2/4/1994	Ventura.
Tarplant, Gaviota	*Deinandra increscens villosa*	E	CA	65 FR 14888; 3/20/2000	Ventura.
Tarplant, Santa Cruz	*Holocarpha macradenia*	T	CA	65 FR 14888; 3/20/2000	Ventura.
Wallflower, Ben Lomond	*Erysimum teretifolium*	E	CA	59 FR 5499; 2/4/1994	Ventura.

Request for New Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

To get more information on a species, submit information on a species, or review information we receive, please use the contact information for the lead Fish and Wildlife Office for the species specified in the table above.

Carlsbad Fish and Wildlife Office: Bradd Baskerville-Bridges, 760–431–9440 (phone); *fw8cfwocomments@fws.gov* (email); or 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008 (U.S. mail);

Hopper Mountain Wildlife Refuge: Steve Kirkland, 805–766–4630 (phone); *steve_kirkland@fws.gov* (email); or 2493 Portola Road, Suite A, Ventura, CA 93003 (U.S. mail);

Reno Fish and Wildlife Office: Shawna Theisen, 775–861–6378 (phone); *RFWOmail@fws.gov* (email); or 1340 Financial Boulevard, Suite 234, Reno, NV 89502 (U.S. mail);

Sacramento Fish and Wildlife Office: Josh Hull, 916–414–6742 (phone); *fw8sfwocomments@fws.gov* (email); or 2800 Cottage Way, Suite W2605, Sacramento, CA 95825 (U.S. mail);

San Francisco Bay-Delta Fish and Wildlife Office: Steven Detwiler, 916–930–2640 (phone); *steven_detwiler@fws.gov* (email); or 650 Capitol Mall, Sacramento, CA 95814 (U.S. mail);

Southern Nevada Fish and Wildlife Office: Kellie Berry, 702–419–5177 (phone); *kellie_berry@fws.gov* (email); or 4701 N Torrey Pines Dr., Las Vegas, NV 89130 (U.S. mail); or

Ventura Fish and Wildlife Office: Cat Darst, 805–677–3318 (phone); *cat_darst@fws.gov* (email); or 2493 Portola Road, Suite B, Ventura CA 93003 (U.S. mail).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Paul Souza,

Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2021–10667 Filed 5–19–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2121A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0104]

Agency Information Collection Activities; Documented Petitions for Federal Acknowledgment as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 19, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) to R. Lee Fleming, Director, Office of Federal Acknowledgment, Assistant Secretary—Indian Affairs, 1849 C Street NW, MS–4071 MIB, Washington, DC 20240; facsimile: (202) 219–3008; email: *Lee.Fleming@bia.gov.* Please reference OMB Control Number 1076–0104 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact R. Lee Fleming, (202) 513–7650.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use 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 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: Submission of this information allows Assistant Secretary-Indian Affairs, Office of Federal Acknowledgment (OFA) to review applications for the Federal acknowledgment of a group as an Indian tribe. The acknowledgment regulations at 25 CFR part 83 contain seven criteria that unrecognized groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collect from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the AS–IA to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Respondents are not required to retain copies of the information submitted to OFA but will probably maintain copies for their own use; therefore, there is no recordkeeping requirement included in this information collection.

Title of Collection: Documented Petitions for Federal Acknowledgment as an Indian Tribe.

OMB Control Number: 1076–0104.

Form Number: BIA–8304, BIA–8305, and BIA–8306.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Groups petitioning for Federal acknowledgment as Indian Tribes.

Total Estimated Number of Annual Respondents: 10 per year, on average.

Total Estimated Number of Annual Responses: 10 per year, on average.

Estimated Completion Time per Response: 2,075 hours, on average.

Total Estimated Number of Annual Burden Hours: 20,750 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

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*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–10645 Filed 5–19–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2121A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0018]

Agency Information Collection Activities; Bureau of Indian Education Tribal Colleges and Universities; Application for Grants and Annual Report Form

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before July 19, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) to Dr. Katherine Campbell, Program Analyst, Office of Research, Policy and Post-Secondary, at 12220 Sunrise Valley Drive, Reston, VA 20191 or by email to *Katherine.Campbell@bie.edu.* Please reference OMB Control Number 1076–0018 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Dr. Katherine Campbell by email at *Katherine.Campbell@bie.edu,* or by telephone at (703) 390–6697.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use 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 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: Each tribally-controlled college or university requesting financial assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (the Act) (25 U.S.C. 1801 *et seq.*), which provides grants to Tribally Controlled Colleges or Universities for the purpose of ensuring continued and expanded educational

opportunities for Indian students. Similarly, each Tribally Controlled College or University that receives financial assistance is required by Sec. 107(c)(1) of the Act and 25 CFR part 41 to provide a report on the use of funds received.

Title of Collection: Bureau of Indian Education Tribal Colleges and Universities; Application for Grants and Annual Report Form.

OMB Control Number: 1076–0018.

Form Number: BIE–62107, BIE–6259, BIE Form 22, and the Third Week Monitoring Form.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribal college and university administrators.

Total Estimated Number of Annual Respondents: 29 per year, on average.

Total Estimated Number of Annual Responses: 29 per year, on average.

Estimated Completion Time per Response: Varies from 1 hour to 11 hours.

Total Estimated Number of Annual Burden Hours: 870 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

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*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–10652 Filed 5–19–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ260000.L10600000. PC0000.00.21X]

Virtual Hearing on the Use of Motorized Vehicles and Aircraft

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, the U.S. Department of the Interior, Bureau of Land Management (BLM) announces the date of a virtual public hearing regarding the use of motorized vehicles and aircraft in the management of wild horses and burros on public lands.

DATES: The BLM will hold a virtual public hearing on Tuesday, May 25, 2021, from 3 p.m. to 5 p.m. Mountain Daylight Time (MDT).

ADDRESSES: The virtual public hearing will be held via the Zoom Webinar Platform. Written comments pertaining to the hearing and written statements that will be presented to the BLM may be filed in advance of the hearing through the Motorized Vehicles email address at *BLM_HQ_MotorizedVehicleHearing@blm.gov.* Please include ''Motorized Vehicles Comment'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Wild Horse and Burro Program Coordinator; telephone: (602) 906–5543, email: *dboothe@blm.gov.* Individuals that use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Ms. Boothe during normal business hours. The FRS is available 24 hours a day, 7 days a week. All responses will be during normal business hours.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Land Policy and Management Act of 1976 and 43 CFR 4740.1(b), the BLM will hold a virtual public hearing on the use of motorized vehicles, helicopters, and fixed-wing aircraft in the management of wild horses and burros on public lands. The public will be notified of future hearings through press releases in addition to other public-facing methods (*e.g.,* the BLM website).

Although the BLM has previously held localized, in-person meetings on the use of motorized vehicles and aircraft in the management of wild horses and burros on public lands, the BLM has determined that, in light of the ongoing COVID–19 pandemic, a virtual hearing is necessary to ensure the safety of the public and Federal employees. Additionally, a virtual meeting that applies to all Western states where the BLM manages wild horses and burros on public lands will provide an opportunity for broader participation by members of the public who might be unable to travel and attend an in-person meeting

The hearing will be open to the public and will be live streamed at *www.blm.gov/live* and through the Zoom Webinar Platform.

Information about the hearing and how to register to speak will be posted 3 days prior to the hearing online at *www.blm.gov/whb.* The public will have an opportunity to provide verbal comments to the BLM during the 2-hour comment period or by submitting written comments to the BLM email address (see **ADDRESSES**) by 5 p.m. MDT on Monday, May 24.

Beyond live captioning, any person(s) with special needs, such as an auxiliary aid, interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. Boothe 3 days before the scheduled hearing date. It is important to adhere to the 3-day notice to allow enough time to arrange for the auxiliary aid or special service. Live captioning will be available throughout the event on both the Zoom Webinar Platform and the livestream page at *www.blm.gov/live.*

Public Comment Procedures

The BLM welcomes comments from all interested parties. Members of the public will have an opportunity to make statements (audio only) to the BLM regarding the use of motorized vehicles and aircraft in the management of wild horses and burros on Tuesday, May 25, from 3 p.m. to 5 p.m. MDT. To accommodate all individuals interested in providing comments, please register with the BLM 3 days in advance of the hearing. Individuals who have not registered in advance but would like to offer comments will be permitted if time allows. Information on how to register, login, and participate in the virtual hearing will be announced at least 3 days in advance of the hearing on the BLM website at *https://www.blm.gov/whb.* Participants using desktops, laptops, smartphones, and other personal digital devices will be able to participate via audio only. Those with phone-only access will also be able to participate via a provided phone number and meeting ID. The BLM may limit the length of comments, depending on the number of participants who register in advance. Please see the **ADDRESSES** section earlier for the BLM email address and include ''Motorized Vehicles Comment'' in the subject line of your email. The BLM will record the entire hearing, including the allotted comment time. Comments should be specific and address the use of motorized vehicles and aircraft in the management of wild horses and burros.

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, the BLM cannot guarantee that it will be able to do so.

(Authority: 43 CFR 4740.1(b))

David B. Jenkins,

Assistant Director, Resources and Planning.

[FR Doc. 2021–10621 Filed 5–19–21; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 21X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on June 21, 2021.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, telephone: (303) 239–3856; email: *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact Mr. Bloom during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat, in 2 sheets, and field notes of the dependent resurvey and survey in Township 12 South, Range 71 West, Sixth Principal Meridian, Colorado, were accepted on November 30, 2020.

The plat, in 6 sheets, incorporating the field notes of the dependent resurvey and subdivision of sections 10, 14, and 23 in Township 51 North, Range 8 East, New Mexico Principal Meridian, Colorado, was accepted on December 29, 2020.

The plat incorporating the field notes of the remonumentation of a corner in Township 43 North, Range 6 East, New Mexico Principal Meridian, Colorado, was accepted on January 7, 2021.

The plat incorporating the field notes of the remonumentation of certain corners in Township 47 North, Range 12 East, New Mexico Principal Meridian, Colorado, was accepted on January 13, 2021.

The plat, in 4 sheets, incorporating the field notes of the dependent resurvey and subdivision of sections 3 and 14 in Township 9 South, Range 70 West, Sixth Principal Meridian, Colorado, was accepted on January 26, 2021.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey in Township 1 North, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on February 3, 2021.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chap. 3)

Randall Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2021–10681 Filed 5–19–21; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031919; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Madison, Department of Anthropology, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Wisconsin-Madison, Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Wisconsin-Madison, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Wisconsin-Madison, Department of Anthropology at the address in this notice by June 21, 2021.

ADDRESSES: Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone: (608) 262–0317, email *sschroeder2@wisc.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Wisconsin-Madison, Department of Anthropology, Madison, WI. The human remains were removed from Silver Mound site, Jackson County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Wisconsin-Madison, Department of Anthropology professional staff in consultation with representatives of the Forest County Potawatomi Community,

Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and the Stockbridge Munsee Community, Wisconsin. The Winnebago Tribe of Nebraska was invited to consult but did not send participate. Hereafter, the above listed Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from Silver Mound (47JA21) site in Jackson County, WI. The human remains—a partial temporal bone—belong to an adult of unknown sex. No known individual was identified. No associated funerary objects are present.

Silver Mound is a National Historic Landmark located two miles west of Alma Center and near the headwaters of the Trempealeau River, in western Wisconsin. The site is characterized by a large outcropping of silicified sandstone. Numerous investigations have taken place there; which one resulted in the recovery of the temporal bone is unknown. Warren Wittry and James W. Porter, UW-Madison Department of Anthropology graduate students, worked at the site in 1958, so they possibly brought the temporal bone to the Department at that time.

Determinations Made by the University of Wisconsin-Madison, Department of Anthropology

Officials of the University of Wisconsin-Madison, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on an examination by a physical anthropologist and the recovery from a known archeological site with recorded documentation of Paleoindian-Oneota occupations.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe [previously listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Wisconsin-Madison, Department of Anthropology is responsible for notifying The Tribes and The Consulted and Invited Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10656 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031920; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Madison, Department of Anthropology, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Wisconsin-Madison, Department of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Wisconsin-Madison, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Wisconsin-Madison, Department of Anthropology at the address in this notice by June 21, 2021.

ADDRESSES: Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Wisconsin-Madison, Department of Anthropology, Madison, WI. The human remains and associated funerary objects were removed from the Nekoosa Mound Group, Wood County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Wisconsin-Madison, Department of Anthropology professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and the Stockbridge Munsee Community, Wisconsin. The Winnebago Tribe of Nebraska were invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

In 1965, human remains representing, at minimum, one individual were removed from Mound 4 of the Nekoosa Mound Group (47WO14) in Wood County, WI. The fragmentary remains belong to an adult of unknown sex. No known individual was identified. The 18 associated funerary objects are 16 soil samples, one processed flotation sample, and one small shell disc.

The Nekoosa Mound Group lies on a bluff above the west bank of the Wisconsin River and almost directly opposite the mouth of Seven Mile Creek. The site was originally comprised of one linear, six oval, and four conical mounds, and one bear effigy mound. In August of 1965, William Hurley, then a UW-Madison graduate student in the Department of Anthropology, excavated the bear effigy mound and Mound 4 (the largest extant conical mound) as part of a program to examine and analyze ancient soil surfaces buried beneath effigy mounds. In Mound 4, Hurley encountered a cremation in a sub-mound pit containing the above listed human remains.

Determinations Made by the University of Wisconsin-Madison, Department of Anthropology

Officials of the Wisconsin-Madison, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on an examination by a physical anthropologist and the recovery from a known archeological site with recorded documentation of Woodland occupations.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 18 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma. Dakota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska (hereafter referred to as ''The Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The University of Wisconsin-Madison, Department of Anthropology is responsible for notifying The Consulted and Invited Tribes and The Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10657 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031922; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Madison, Department of Anthropology, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Wisconsin-Madison, Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written

request to the University of Wisconsin-Madison, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Wisconsin-Madison, Department of Anthropology at the address in this notice by June 21, 2021.

ADDRESSES: Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Wisconsin-Madison, Department of Anthropology, Madison, WI. The human remains were removed from Polk County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Wisconsin-Madison, Department of Anthropology professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and the Stockbridge Munsee Community, Wisconsin. The Winnebago Tribe of Nebraska was invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unidentified site near Frederic, Polk County, WI. Although the human remains were recorded in a 1968 inventory sheet of the skeletal collections in the Physical Anthropology Lab at UW-Madison as belonging to a group of miscellaneous, poorly documented loans from the Wisconsin Historical Society, the Wisconsin Historical Society disputes this notion. Based on the catalog number associated with these human remains, the human remains were donated to the Wisconsin Historical Society in 1921, by F.O. Hendricks. How these human remains came to be curated in the University of Wisconsin-Madison Department of Anthropology is unknown. The fragmentary remains belong to an adult, possibly female. No known individual was identified. No associated funerary objects are present.

Determinations Made by the University of Wisconsin-Madison, Department of Anthropology

Officials of the University of Wisconsin-Madison, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on an examination by a physical anthropologist and the recovery from known archeological sites with recorded documentation of prehistoric Native American occupations.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereafter referred to as ''The Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Wisconsin-Madison Department of Anthropology is responsible for notifying The Tribes and The Consulted and Invited Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10659 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031916; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of Anthropology, University of South Florida, Tampa, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of Anthropology, University of South Florida has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Department of Anthropology, University of South Florida. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Department of Anthropology, University of South Florida at the address in this notice by June 21, 2021.

ADDRESSES: Thomas J. Pluckhahn, Department of Anthropology, University of South Florida, 4202 E Fowler Avenue, SOC 107, Tampa, FL 33620–8100, telephone (813) 549–9742, email *tpluckhahn@usf.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Department of Anthropology, University of South Florida, Tampa, FL. The human remains were removed from an unknown site in Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Department of Anthropology, University of South Florida professional staff in consultation with representatives of the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico.

The Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico [previously listed as the Pueblo of Santo Domingo]; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico [previously listed as the Pueblo of San Juan]; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes [previously listed as Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)]; Pascua Yaqui Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona were invited to consult but did not participate.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown site in Arizona. The human remains were identified by a label reading ''Indian Thigh from the Petrified Forest, Ariz.'' The human remains appear to have been part of a large donation to the Department of Anthropology, University of South Florida, from a local museum at an unknown date. The human remains consist of fragments of a left femur and right tibia that have been attached with a metal screw. Examination found that the human remains represent an adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

Based on geographical, archeological, oral tradition, and historical lines of evidence, as well as expert opinion, the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico are culturally affiliated with the human remains.

Determinations Made by the Department of Anthropology, University of South Florida

Officials of the Department of Anthropology, University of South Florida have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Thomas J. Pluckhahn, Department of Anthropology, University of South Florida, 4202 E Fowler Avenue, SOC 107, Tampa, FL 33620–8100, telephone (813) 549–9742, email *tpluckhahn@usf.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico, may proceed.

The Department of Anthropology, University of South Florida is responsible for notifying the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10653 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031923; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Madison, Department of Anthropology, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Wisconsin-Madison, Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Wisconsin-Madison, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Wisconsin-Madison, Department of Anthropology at the address in this notice by June 21, 2021.

ADDRESSES: Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Wisconsin-Madison, Department of Anthropology, Madison, WI. The human remains were removed from Crawford County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Wisconsin-Madison, Department of Anthropology professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and the Stockbridge Munsee Community, Wisconsin. The Winnebago Tribe of Nebraska were invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from the Flucke site (47CR3) in Crawford County, WI. The Flucke Site is located at the edge of the Prairie du Chien Terrace, overlooking the confluence of the Wisconsin and Mississippi Rivers. It is on the east side of the Mississippi River and the north side of the Wisconsin River. The multi-component site comprises a mound group which once contained at least 15 conical mounds, one linear mound, and a two-acre habitation site. In the 1880s, five of the mounds were excavated by the Bureau of American Ethnology. By 1972, the mound group had been leveled. The human remains in the UW Department of Anthropology were collected from the surface of the site by avocational archeologist Al Reed and donated to the Department. The remains consist of a partial cranial fragment belonging to an adult of unknown sex. No known individual was identified. No associated funerary objects are present.

Determinations Made by the University of Wisconsin-Madison, Department of Anthropology

Officials of the Wisconsin-Madison, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on an examination by a physical anthropologist and the recovery of these remains from a known archeological site that has a Late Woodland affiliation.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska (hereafter referred to as ''The Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone

(608) 262–0317, email *sschroeder2@wisc.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Wisconsin-Madison, Department of Anthropology is responsible for notifying The Tribes and The Consulted and Invited Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10660 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031924; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Edge of the Cedars State Park Museum, Blanding, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Edge of the Cedars State Park Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Edge of the Cedars State Park Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Edge of the Cedars State Park Museum at the address in this notice by June 21, 2021.

ADDRESSES: Chris Hanson, Manager, Edge of the Cedars State Park Museum, 660 W 400 N, Blanding, UT 84511–4000, telephone (435) 678–2238, email *chanson@utah.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Edge of the Cedars State Park Museum, Blanding, UT. The human remains and associated funerary objects were removed from Edge of the Cedars Site 42SA700, San Juan County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by Edge of the Cedars State Park Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico (previously listed as Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Tesuque, New Mexico; Southern Paiute Tribe, Santa Clara Pueblo, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

Between 1967 and 1987, human remains representing, at minimum, 12 individuals were removed from Edge of the Cedars Site 42SA700, San Juan County, UT. Museum archives indicate that the individuals were removed from an enormous depression under a large rubble mound during several in-house excavations. Additional intensive excavations were conducted on the site by Weber State College and Brigham Young University between 1969 and 1972, focusing on the rubble mound and depression, which were later recognized as a great house and great kiva, respectively. The human remains consist of eight adults, three juveniles, and one infant; all are of unknown sex. No known individuals were identified. The 28 associated funerary objects are sixteen fossil shells, seven pottery sherds, one bag of faunal bone, one stone bead, one bag of pigment, one bag of eggshell fragments, and one copper bell.

Determinations Made by the Edge of the Cedars State Park Museum

Officials of the Edge of the Cedars State Park Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their discovery location within a prehistoric Native American architectural feature.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 28 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico, & Utah.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico, & Utah.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Navajo Nation, Arizona, New Mexico, & Utah.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Chris Hanson, Manager, Edge

of the Cedars State Park Museum, 660 W 400 N, Blanding, UT 84511–4000, telephone (435) 678–2238, email *chanson@utah.gov,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Navajo Nation, Arizona, New Mexico, & Utah may proceed.

The Edge of the Cedars State Park Museum is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10651 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031921; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Madison, Department of Anthropology, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Wisconsin-Madison, Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Wisconsin-Madison, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Wisconsin-Madison, Department of Anthropology at the address in this notice by June 21, 2021.

ADDRESSES: Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Wisconsin-Madison, Department of Anthropology, Madison, WI. The human remains were removed from Dane, Green Lake, Monroe, and Sauk Counties, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Wisconsin-Madison, Department of Anthropology professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and the Stockbridge Munsee Community, Wisconsin. The Winnebago Tribe of Nebraska was invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

In 1937, human remains representing, at minimum, one individual were removed from the Willow Drive Mound Group (47DA119) in Dane County, WI. The site is located on the south shore of Lake Mendota, and it is one of several mound groups on the campus of the University of Wisconsin-Madison. In 1937, Charles E. Brown, of the Wisconsin Historical Society, excavated the two linear mounds in this group. Based on a 1966 publication by David Baerreis, these human remains—a nearly complete cranium—are believed to have been removed from ''Mound 3.'' How they came to be curated at the University of Wisconsin-Madison, Department of Anthropology is unclear (University faculty were not directly involved with the excavations). The human remains belong to a young adult, possibly female. No known individual was identified. No associated funerary objects are present.

Sometime prior to 1967, human remains representing, at minimum, one individual were removed from the Big Bend site (47GL262) in Green Lake County, WI. The site is located on the east bank of the Fox River. In 1922, Towne Miller reported the site, and at some undetermined point, excavations were carried out there. At least one bird effigy mound and one panther effigy mound were originally identified at the Big Bend site. A number written on the human remains matches the number assigned to a clavicle reported in a 1967 Department of Anthropology inventory. How the human remains came to be curated at the University of Wisconsin-Madison, Department of Anthropology is unknown. (They might have been a loan from the Milwaukee Public Museum, but as that institution has no record of such a loan, the University of Wisconsin-Madison, Department of Anthropology has asserted control of them.) The partial skeletal remains belong to an elderly adult male. No known individual was identified. No associated funerary objects are present.

Sometime prior to 1968, human remains representing, at minimum, one individual were removed from the Mound Prairie East site (47MO6) in Monroe County, WI. The site is in the Town of Adrian, near Smith Creek, which is part of the upper La Crosse River drainage in western Wisconsin. The Mound Prairie East site, of Woodland cultural affiliation, was visited by H.E. Cole and A.S. Flint ca. 1912, as part of a statewide archeological survey conducted under the aegis of the Wisconsin Archeological Society. Cole and Flint observed human bone fragments on the disturbed tops of several mounds, and they excavated human remains in the mound nearest to the Roberts house. The human remains have been housed at the University of Wisconsin-Madison, Department of Anthropology since at least 1968, as documented in an inventory from that same year. (They might have been a loan from the Wisconsin Historical Society, but as that institution has no record of such a loan, the University of Wisconsin-Madison, Department of Anthropology has asserted control of them.) The fragmentary remains belong to an adult male. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from Sauk County, WI. They are believed to have been removed from the Langdon Mounds site (47SK57), an Effigy Mound group consisting of three bear effigy mounds and one linear mound (as there is no known record of excavations at this mound group by the University of Wisconsin-Madison, the SK57 designation might be a field number for a different site in Sauk County where UW archeologists did carry out excavations). The site, situated on the south side of the Baraboo River and on a toe slope along the northern side of the South Range of the Baraboo Hills, was reported in 1906, by A.B. Stout. At that time, the mounds had been disturbed by road construction and timber cutting. Most of the referenced surveys at this site describe attempts to relocate the mounds; none mention human remains or burials. The fragmentary remains belong to a 16–20-year-old female. No known individual was identified. No funerary objects are present.

Determinations Made by the University of Wisconsin-Madison, Department of Anthropology

Officials of the Wisconsin-Madison, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on an examination by a physical anthropologist and the recovery of these remains from a known archeological site that has a Late Woodland affiliation.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may proceed.

The University of Wisconsin-Madison, Department of Anthropology is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10658 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031917; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of Anthropology, University of South Florida, Tampa, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of Anthropology, University of South Florida has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Department of Anthropology, University of South Florida. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Department of Anthropology, University of South Florida at the address in this notice by June 21, 2021.

ADDRESSES: Thomas J. Pluckhahn, Department of Anthropology, University of South Florida, 4202 E. Fowler Avenue, SOC 107, Tampa, FL 33620–8100, telephone (813) 549–9742, email *tpluckhahn@usf.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Department of Anthropology, University of South Florida, Tampa, FL. The human remains were removed from the southern Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Department of Anthropology, University of South Florida professional staff in consultation with representatives of the Quapaw Nation [previously listed as The Quapaw Tribe of Indians]; Shawnee Tribe; and The Osage Nation [previously listed as Osage Tribe].

The Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Quassarte Tribal Town; Apache Tribe of Oklahoma; Caddo Nation of Oklahoma; Coushatta Tribe of Louisiana; Delaware Nation, Oklahoma; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; Santee Sioux Nation, Nebraska; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma were invited to consult but did not participate (hereafter, these non-participating Indian Tribes are referred to as ''The Invited Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown site in southern Arkansas.

When the human remains were acquired by the University of South Florida is also unknown. The human remains may have been part of a larger donation from the St. Petersburg (Florida) Museum of History or another local museum. The human remains consist of a single mandible in two pieces and represent an adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

Based on geographical, archeological, oral traditional, and historical lines of evidence, as well as expert opinion, the Quapaw Nation [previously listed as The Quapaw Tribe of Indians]; Shawnee Tribe; and The Osage Nation [previously listed as Osage Tribe] are culturally affiliated with the human remains.

Determinations Made by the Department of Anthropology, University of South Florida

Officials of the Department of Anthropology, University of South Florida have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Quapaw Nation [previously listed as The Quapaw Tribe of Indians]; Shawnee Tribe; and The Osage Nation [previously listed as Osage Tribe] (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Thomas J. Pluckhahn, Department of Anthropology, University of South Florida, 4202 E. Fowler Avenue, SOC 107, Tampa, FL 33620–8100, telephone (813) 549–9742, email *tpluckhahn@usf.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Department of Anthropology, University of South Florida is responsible for notifying The Tribes and The Invited Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10654 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031918; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Madison, Department of Anthropology, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Wisconsin-Madison, Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Wisconsin-Madison, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Wisconsin-Madison, Department of Anthropology at the address in this notice by June 21, 2021.

ADDRESSES: Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Wisconsin-Madison, Department of Anthropology, Madison, WI. The human remains were removed from Grant County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Wisconsin-Madison, Department of Anthropology professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and the Stockbridge Munsee Community, Wisconsin. The Winnebago Tribe of Nebraska was invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

At an unknown time, human remains representing, at minimum, one individual were removed from the Nelson Dewey site (47GT1) in Grant County, WI. According to a dissertation by Lois Lippold, Dr. David A. Baerreis of the University of Wisconsin-Madison Anthropology Department conducted limited salvage excavation at this site. Although no summary excavation report is available, the University of Wisconsin-Madison Anthropology Department reasonably believes these human remains were collected during Baerreis' salvage excavations, and that they have likely been curated at the University of Wisconsin-Madison Department of Anthropology since the time of their recovery. The human remains, which are fragmentary, belong to an adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

The Nelson Dewey site is situated east of the Mississippi River in Nelson Dewey State Park, near the town of Cassville. It is a large pre-contact village site with Middle and Late Woodland components. Wilfred Logan excavated several trenches across the site in 1955. Plow zone deposits produced Late Woodland Madison Cord-Impressed

pottery, as well as Millville Phase Middle Woodland artifacts.

Between 1967–1972, human remains representing, at minimum, five individuals were removed from the Brogley Rockshelter in Grant County, WI. The partial and fragmentary skeletal remains belong to one adult of unknown sex, one subadult of unknown sex, one young child, and two fetuses. No known individuals were identified. No associated funerary objects are present.

The Brogley Rockshelter (47GT156) is a rock overhang located on the west bank of the Platte River. It was excavated between 1967–1972 by the Platteville Student Archeologists under the direction of avocational archeologist Robert Nelson, and in the summer of 1972 by a UW-Madison graduate student, Donna Scott. Deeply stratified cultural deposits of Early-Middle Archaic through Late Woodland stages were identified. The upper levels of the site had been disturbed by looting and a tunnel at the rear of the overhang had been dug by spelunkers prior to 1965. The five individuals were believed to be recovered from this spelunker tunnel prior to the excavations. The human remains were identified during a 2012 rehousing project and are presumed to have been curated at the University of Wisconsin-Madison, Department of Anthropology since the conclusion of the excavations.

Determinations Made by the University of Wisconsin-Madison, Department of Anthropology

Officials of the University of Wisconsin-Madison, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on an examination by a physical anthropologist and the recovery from known archeological sites with recorded documentation of prehistoric Native American occupations.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska (hereafter referred to as ''The Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sissel Schroeder, University of Wisconsin-Madison, Department of Anthropology, 1180 Observatory Drive, 5240 Social Sciences Building, Madison, WI 53706, telephone (608) 262–0317, email *sschroeder2@wisc.edu,* by June 21, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Wisconsin-Madison Department of Anthropology is responsible for notifying The Tribes and The Consulted and Invited Tribes that this notice has been published.

Dated: May 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–10655 Filed 5–19–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–125 (Fifth Review)]

Potassium Permanganate From China; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: May 7, 2021.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (202–205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part

201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On May 7, 2021, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (86 FR 7743, February 1, 2021) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 17, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–10647 Filed 5–19–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1088 (Rescission)]

Certain Road Construction Machines and Components Thereof; Commission Decision To Institute a Rescission Proceeding; Permanent Rescission of a Limited Exclusion Order and Cease and Desist Order; Termination of the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a proceeding to determine whether to permanently rescind the Commission's limited exclusion order (''LEO'') and cease and desist order (''CDO'') issued in the above-captioned investigation. The LEO and the CDO are permanently rescinded. The rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2017, based on a complaint, as supplemented, filed by Caterpillar Inc. of Peoria, Illinois and Caterpillar Paving Products, Inc. of Minneapolis, Minnesota (collectively, ''Caterpillar''). *See* 82 FR 56625–26 (Nov. 29, 2017). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain road construction machines and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,140,693 (''the '693 patent''); 9,045,871; and 7,641,419. *See id.* The notice of investigation identifies the following respondents: Wirtgen GmbH of Windhagen, Germany; Joseph Vögele AG of Ludwigshafen, Germany; Wirtgen Group Holding GmbH of Windhagen, Germany; and Wirtgen America, Inc. of Antioch, Tennessee (''Wirtgen America'') (collectively, ''Wirtgen''). *See id.* The Office of Unfair Import Investigations is not a party to this investigation. *See id.*

On June 27, 2019, the Commission found a violation of section 337 based on the infringement of claim 19 of the '693 patent and issued an LEO against the infringing articles and a CDO against Wirtgen America (collectively, ''the remedial orders''). *See* 84 FR 31910–11 (July 3, 2019).

On January 16, 2020, the Commission instituted a modification proceeding to determine whether Wirtgen's redesigned series 1810 machines infringe claim 19 of the '693 patent. On August 31, 2020, the Commission determined that Wirtgen's redesigned machines do not infringe and issued modified remedial orders exempting the redesigned machines from the scope of the orders. *See* 85 FR 55320–21 (Sept. 4, 2020).

On April 29, 2021, Caterpillar and Wirtgen filed a joint petition to rescind the remedial orders. Commission Rule 210.76(a)(1), 19 CFR 210.76(a)(1), permits rescission of Commission remedial orders on the basis of ''changed conditions of fact or law.'' The petition asserts that such changed conditions exist here. In particular, the parties explain that the Patent Trial and Appeal Board (''PTAB'') of the U.S. Patent and Trademark Office found claim 19 of the '693 patent to be unpatentable in a Final Written Decision, that Caterpillar took an appeal from the PTAB to the U.S. Court of Appeals for the Federal Circuit, that Caterpillar moved the Federal Circuit to dismiss its appeal, and that the Federal Circuit granted that motion. Pet. at 1–2.

In view of the Federal Circuit's dismissal of Caterpillar's appeal from the PTAB's Final Written Decision, the fact that the patent claim upon which the remedial orders are based is unpatentable, and the fact that Caterpillar and Wirtgen both agree that rescission is appropriate now, the Commission has determined to institute a rescission proceeding and to grant the joint petition for rescission. The Commission permanently rescinds the LEO and the CDO. The rescission proceeding is hereby terminated.

The Commission's vote for this determination took place on May 14, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 14, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–10585 Filed 5–19–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Maietta Construction, Inc., et al.,* Civil Action No. 2:21–cv–00131–JDL, was lodged with the United States District Court for the District of Maine on May 14, 2021.

This proposed Consent Decree concerns a complaint filed by the United States against Maietta

Construction, Inc., Maietta Enterprises, Inc., and M7 Land Co., LLC (''Defendants'') pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and/or perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Perry M. Rosen, United States Department of Justice, Environment and Natural Resources Division, Post Office Box 7611, Washington, DC 20044–7611, *pubcomment_eds.enrd@usdoj.gov,* and refer to *United States* v. *Maietta Construction, Inc., et al.,* DJ # 90–5–1–1–20450.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Maine, located at Edward T. Gignoux United States Courthouse, 156 Federal Street, Portland, ME 04101. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2021–10630 Filed 5–19–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 21, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection requires underground coal mine operators to equip continuous mining machines, except full-face continuous mining machines, with proximity detection systems (80 FR 2188). Miners working near continuous mining machines face pinning, crushing, and striking hazards that result in accidents involving life-threatening injuries and death. Proximity detection is a technology that uses electronic sensors to detect the motion or the location of one object relative to another. Proximity detection systems provide a warning and stop mining machines before a pinning, crushing, or striking accident occurs that could result in injury or death to a miner. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 4, 2020 (85 FR 78364).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Proximity Detection Systems for Continuous Mining Machines in Underground Mines.

OMB Control Number: 1219–0148.

Affected Public: Private Sector, Businesses or other for-profits.

Total Estimated Number of Respondents: 116.

Total Estimated Number of Responses: 191,288.

Total Estimated Annual Time Burden: 544 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

PRA Senior Analyst.

[FR Doc. 2021–10641 Filed 5–19–21; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; General Provisions and Confined and Enclosed Spaces and Other Dangerous Atmosphere in Shipyards Employment Standards

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 21, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: To ensure that shipyard personnel do not enter confined spaces that contain oxygen deficient, toxic or flammable atmospheres, qualified (competent) personnel must test such spaces. Information provides individuals deemed qualified by the employer to conduct such tests, plus results and instructions. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 23, 2020 (85 FR 84006).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: General Provision and Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment Standards Dangerous.

OMB Control Number: 1218–0011.

Affected Public: Private Sector, Businesses or other for-profits.

Total Estimated Number of Respondents: 4,716.

Total Estimated Number of Responses: 3,555,305.

Total Estimated Annual Time Burden: 566,818 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Senior PRA Analyst.

[FR Doc. 2021–10639 Filed 5–19–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Forging Machines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 21, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Employers must establish periodic inspections of forging machines, guards, and point-of-operation protection devices and to mark manually controlled valves and switches. These requirements reduce workers' risks of death or serious injury by ensuring that forging machines used by them are in safe operating condition, and that they are able to identify manually operated valves and switches. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 21, 2020 (85 FR 83107).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Forging Machines.

OMB Control Number: 1218–0228.

Affected Public: Private Sector, Not-for-profit.

Total Estimated Number of Respondents: 27,700.

Total Estimated Number of Responses: 1,440,400.

Total Estimated Annual Time Burden: 384,106 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Senior PRA Analyst.

[FR Doc. 2021–10640 Filed 5–19–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement without change of the ''Current Population Survey (CPS) Displaced Worker, Job Tenure, and Occupational Mobility Supplement'' to be conducted in January 2022 and January 2024. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 19, 2021.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS Displaced Worker, Job Tenure, and Occupational Mobility supplement is conducted biennially and was last collected in January 2020.

This supplement will gather information on workers who have lost or left their jobs because their plant or company closed or moved, there was insufficient work for them to do, or their position or shift was abolished. Data will be collected on the extent to which displaced workers received advance notice of job cutbacks or the closing of their plant or business. For those workers who have been reemployed, the supplement will gather data on the types of jobs they found and will compare current earnings with those from the lost job. The incidence and nature of occupational changes in the preceding year will be queried. The survey also probes for the length of time workers (including those who have not been displaced) have been with their current employer. Additional data to be collected include information on the receipt of unemployment compensation, the loss of health insurance coverage, and the length of time spent without a job.

Because this supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the supplement. Comparisons will be possible across characteristics such as sex, race and ethnicity, age, and educational attainment of the respondent.

The information collected by this survey will be used to determine the size and nature of the population affected by job displacements and the needs and scope of programs serving adult displaced workers. It also will be used to assess employment stability by determining the length of time workers have been with their current employer and estimating the incidence of occupational change over the course of a year. Combining the questions on displacement, job tenure, and occupational mobility will enable analysts to obtain a more complete picture of employment stability. This is especially relevant given the increase in unemployment due to the coronavirus (COVID–19) pandemic, which may also have accelerated structural changes in the economy.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS Displaced Worker, Job Tenure, and Occupational Mobility Supplement to the CPS. A reinstatement without change of this previously approved collection, for which approval has expired, is needed to provide the Nation with timely information about displaced workers, job tenure, and occupational mobility.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

Title of Collection: CPS Displaced Worker, Job Tenure, and Occupational Mobility Supplement.

OMB Number: 1220–0104.

Type of Review: Reinstatement, without change.

Affected Public: Households.

Total Respondents: 48,000.

Frequency: Once, biennially.

Total Responses: 48,000.

Average Time per Response: 8 minutes.

Estimated Total Burden Hours: 6,400 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on May 14, 2021.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2021–10637 Filed 5–19–21; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0005]

Preparations for the 40th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that OSHA will conduct a virtual public meeting in advance of certain international meetings. The first meeting will be held in advance of the official 40th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held as a hybrid (in-person and virtual) meeting July 5–7, 2021, in Geneva, Switzerland. OSHA, along with the U.S. Interagency Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting.

DATES: The virtual public meeting will take place on June 23, 2021. Specific information for each meeting will be posted when available on the OSHA website at *https://www.osha.gov/dsg/hazcom/hazcom_international.html#meeting-notice.*

ADDRESSES: The meetings will be virtually hosted through the DOT Headquarters Conference Center, 1200 New Jersey Avenue SE, Washington, DC 20590.

Written Comments: Interested parties may submit comments between June 4 through 25, 2021, on the Working and Informal Papers for the 40th sessions of the UNSCEGHS to the docket established for International/Globally Harmonized System (GHS) efforts at: *http://www.regulations.gov,* Docket No. OSHA–2016–0005.

Registration to Attend and/or to Participate in the Virtual Meeting: These meetings will be open to the public on a first-come, first served basis, as space is limited. Advanced meeting registration information will be posted on the PHMSA website. DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Attendees may use the same form to pre-register for both meetings. Failure to pre-register may delay your access into the DOT Headquarters conference call line. Conference call-in and ''Teams meeting'' capability will be provided for both meetings. Information on how to access the conference call and ''Teams meeting'' will be posted when available at: *https://www.phmsa.dot.gov/international-program/international-program-overview* under Upcoming Events. This information will also be posted on OSHA's Hazard Communication website on the international tab at: *https://www.osha.gov/dsg/hazcom/hazcom_international.html#meeting-notice.*

FOR FURTHER INFORMATION CONTACT:

At the Department of Transportation: Please contact Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590, telephone: (202) 366–8553.

At the Department of Labor: Please contact Ms. Maureen Ruskin, OSHA Directorate of Standards and Guidance, Department of Labor, Washington, DC 20210, telephone: (202) 693–1950, email: *ruskin.maureen@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA will conduct a virtual public meeting in advance of the 40th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held as a hybrid meeting in early July 2021, in Geneva, Switzerland. This virtual public meeting will occur jointly with the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) (see FR Doc. 2020–09076 Filed 4–28–20) to discuss proposals in preparation for the 58th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCETDG) to be held as a hybrid meeting June 28–July 2, 2021. Advanced meeting registration information will be posted on the PHMSA website (see Docket No. PHMSA–2019–0224; Notice No. 2020–02).

For each of these meetings, OSHA and PHMSA will solicit public input on U.S. government positions regarding proposals submitted by member countries in advance of each meeting.

The OSHA Meeting

OSHA is hosting an open informal public meeting of the official 40th session of the UNSCEGHS which will represent the third and final meeting scheduled for the 2019–2020 biennium. Information on the work of the UNSCEGHS including meeting agendas, working and informal papers, reports, and documents from previous sessions can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division website located at: *http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html.*

The PHMSA Meeting

Additional information regarding the UNSCETDG and related matters can be found on PHMSA's website at: *https://www.phmsa.dot.gov/international-program/international-program-overview.*

Authority and Signature

James S. Frederick, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice under the authority granted by sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary's Order 1–2012 (77 FR 3912), (Jan. 25, 2012).

Signed at Washington, DC.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–10636 Filed 5–19–21; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0093]

Environmental Assessments and Findings of No Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice regarding the issuance of a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for its review and approval of initial and updated decommissioning funding plans (DFPs) submitted by independent spent fuel storage installation (ISFSI) licensees for the ISFSIs listed in the ''Discussion'' section of this document.

DATES: The EA and FONSI referenced in this document are available on May 20, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0093 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0093. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6877, email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of initial and updated DFPs submitted by ISFSI licensees. The NRC staff has prepared a final EA and FONSI determination for each of the initial and updated ISFSI DFPs in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation requires each holder of, or applicant for, a license under 10 CFR part 72 to submit a DFP for the NRC's review and approval. The DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff will later publish its financial analyses of the DFP submittals which will be available for public inspection in ADAMS.

II. Discussion

The table in this notice includes the plant name, docket number, licensee, and ADAMS accession number for the final EA and FONSI determination for each of the individual ISFSIs. The table also includes the ADAMS accession numbers for other relevant documents, including initial and updated DFP submittals. For further details with respect to these actions, see the NRC staff's final EA and FONSI determinations which are available for public inspection in ADAMS and at *https://www.regulations.gov* under Docket ID NRC–2021–0093. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility	Cooper Nuclear Station
Docket No	72–66.
Licensee	Nebraska Public Power District (NPPD).
Proposed Action	The NRC's review and approval of NPPD's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of NPPD's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of NPPD's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Cooper Nuclear Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Cooper ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. NPPD. Cooper Nuclear Station—ISFSI DFP, dated December 17, 2012. ADAMS Accession No. ML12354A216.

FINDING OF NO SIGNIFICANT IMPACT—Continued

	NPPD. Cooper Nuclear Station—ISFSI DFP, dated December 17, 2015. ADAMS Accession No. ML16014A382. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for the Cooper Nuclear Station ISFSI DFP, dated July 15, 2016. ADAMS Accession No. ML17082A596. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Nebraska Public Power District's DFP Update for Cooper Nuclear Station ISFSI, dated February 28, 2018. ADAMS Package Accession No. ML18060A025. NPPD. Response to Request for Additional Information Regarding DFPs for ISFSIs, dated April 11, 2018. ADAMS Accession No. ML18110A103. U.S. Nuclear Regulatory Commission. Final EA and FONSI for Nebraska Public Power District's Initial and Updated DFPs for Cooper Nuclear Station ISFSI, dated May 14, 2021. ADAMS Accession No. ML21054A028.
Facility	Fort Calhoun Station, Unit 1.
Docket No	72–54.
Licensee	Omaha Public Power District (OPPD).
Proposed Action	The NRC's review and approval of OPPD's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of OPPD's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of OPPD's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Fort Calhoun Station, Unit 1. Therefore, the NRC staff determined that approval of the DFPs for the Fort Calhoun Station, Unit 1 ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. OPPD. OPPD Nuclear DFP for the Fort Calhoun Station ISFSI, dated March 6, 2013. ADAMS Accession No. ML13067A319. OPPD. Fort Calhoun, Unit 1, 2015 Biennial Decommissioning Funding Status Report & OPPD Nuclear DFP for Fort Calhoun Station ISFSI, dated March 31, 2015. ADAMS Accession No. ML15090A763. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for the Fort Calhoun ISFSI DFP, dated August 17, 2017. ADAMS Accession No. ML17227A027. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Omaha Public Power District's DFP Update for Fort Calhoun Station ISFSI, dated March 8, 2018. ADAMS Package Accession No. ML18067A141. OPPD. Response to Request for Additional Information Regarding OPPD's DFP Update for Fort Calhoun Station ISFSI, dated March 29, 2018. ADAMS Accession No. ML18088B378. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Omaha Public Power District's Initial and Updated DFPs for Fort Calhoun Nuclear Generating Station, Unit 1 ISFSI, dated May 14, 2021. ADAMS Accession No. ML21053A233.
Facility	Virgil C. Summer Nuclear Station Unit No. 1.
Docket No	72–1038.
Licensee	South Carolina Electric & Gas Company (SCE&G), currently Dominion Energy South Carolina, Inc. (Dominion), and South Carolina Public Service Authority (Authority).
Proposed Action	The NRC's review and approval of SCE&G's and Authority's initial DFPs submitted in accordance with 10 CFR 72.30(b).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of SCE&G's and Authority's initial DFPs, submitted in accordance with 10 CFR 72.30(b), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.

FINDING OF NO SIGNIFICANT IMPACT—Continued

Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SCE&G's and Authority's initial DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Virgil C. Summer Nuclear Station Unit No. 1. Therefore, the NRC staff determined that approval of the initial DFPs for the Virgil C. Summer Nuclear Station Unit No. 1 ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. South Carolina Electric & Gas Company, 2016. Virgil C. Summer, Unit No.1, ISFSIs, DFP, dated March 15, 2016. ADAMS Accession No. ML16081A168. South Carolina Public Service Authority, 2016. Virgil C. Summer, Unit No. 1, ISFSI, DFP, dated March 18, 2016. ADAMS Accession No. ML16081A136. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the SCE&G's and South Carolina Public Service Authority's Initial DFPs for Virgil C. Summer Nuclear Station Unit No.1 ISFSI, dated May 14, 2021. ADAMS Accession No. ML21055A398.

Dated: May 14, 2021.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–10595 Filed 5–19–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0097]

Environmental Assessments and Findings of no Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice regarding the issuance of a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for its review and approval of the initial decommissioning funding plans (DFPs) submitted by independent spent fuel storage installation (ISFSI) licensees for ISFSIs listed in the ''Discussion'' section of this document.

DATES: The EA and FONSI referenced in this document are available on May 20, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0097 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0097. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1018, email: *Yen-Ju.Chen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the initial DFPs submitted by ISFSI licensees. The NRC staff has prepared a final EA and FONSI determination for each of the initial ISFSI DFPs in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation requires each holder of, or applicant for, a license under 10 CFR part 72 to submit a DFP for the NRC's review and approval. The DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff will later publish its financial analyses of the DFP submittals which will be available for public inspection in ADAMS.

II. Discussion

The table in this notice includes the plant name, docket number, licensee, and ADAMS accession number for the

final EA and FONSI determination for each of the individual ISFSIs. The table also includes the ADAMS accession numbers for other relevant documents, including the initial and updated DFP submittals. For further details with respect to these actions, see the NRC staff's final EA and FONSI determinations which are available for public inspection in ADAMS and at *https://www.regulations.gov* under Docket ID NRC–2021–0097. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility	Joseph M. Farley Nuclear Plant, Units 1 and 2, ISFSI.
Docket No	72–42.
Licensee	Southern Nuclear Operating Company, Inc. (SNC).
Proposed Action	The NRC's review and approval of SNC's initial DFP submitted in accordance with 10 CFR 72.30(b).
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of SNC's initial DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial DFP will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SNC's initial DFP. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Joseph M. Farley Nuclear Plant, Units 1 and 2. Therefore, the NRC staff determined that approval of the initial DFP for the Farley ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Alabama Emergency Management Agency. Review of the Draft EA and FONSI for the Farley Nuclear Plant Units 1 and 2 ISFSI DFP, dated March 18, 2021. ADAMS Accession No. ML21081A039. Southern Nuclear Operating Company, Inc. ISFSI DFP, dated March 31, 2014. ADAMS Accession No. ML14091A008. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for the Farley Nuclear Plant Units 1 and 2 ISFSI DFP, dated March 9, 2021. ADAMS Accession No. ML21057A252. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Southern Nuclear Operating Company, Inc's Initial DFP Submitted in Accordance with 10 CFR 72.30(b) for Joseph M. Farley Nuclear Plant, Units 1 and 2, ISFSI, dated May 10, 2021. ADAMS Package Accession No. ML21085A675.
Facility	Edwin I. Hatch Nuclear Plant Unit Nos. 1 and 2, ISFSI.
Docket No	72–36.
Licensee	Southern Nuclear Operating Company, Inc. (SNC).
Proposed Action	The NRC's review and approval of SNC's initial DFP submitted in accordance with 10 CFR 72.30(b).
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of SNC's initial DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial DFP will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SNC's initial DFP. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2. Therefore, the NRC staff determined that approval of the initial DFP for the Hatch ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Southern Nuclear Operating Company, Inc. ISFSI DFP, dated March 31, 2014. ADAMS Accession No. ML14091A008. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for the Farley and Vogtle ISFSI DFP, dated March 9, 2021. ADAMS Accession No. ML21057A315. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Southern Nuclear Operating Company, Inc.'s Initial DFP Submitted in Accordance with 10 CFR 72.30(b) for Hatch Nuclear Plant Unit Nos. 1 and 2 ISFSI, dated May 10, 2021. ADAMS Package Accession No. ML21085A829.
Facility	Vogtle Electric Generating Plant, Units 1 and 2, ISFSI.

FINDING OF NO SIGNIFICANT IMPACT—Continued

Docket No	72–1039.
Licensee	Southern Nuclear Operating Company, Inc. (SNC).
Proposed Action	The NRC's review and approval of SNC's initial DFP submitted in accordance with 10 CFR 72.30(b).
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of SNC's initial DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial DFP will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SNC's initial DFP. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Vogtle Electric Generating Plant, Units 1 and 2. Therefore, the NRC staff determined that approval of the initial DFP for the Vogtle ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Southern Nuclear Operating Company, Inc. ISFSI DFP, dated March 31, 2014. ADAMS Accession No. ML14091A008. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for the Farley and Vogtle ISFSI DFP, dated March 9, 2021. ADAMS Accession No. ML21057A315. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Southern Nuclear Operating Company, Inc.'s Initial DFP Submitted in Accordance with 10 CFR 72.30(b) for Vogtle Electric Generating, Plant Units 1 and 2, ISFSI, dated May 10, 2021. ADAMS Package Accession No. ML21089A221.

Dated: May 14, 2021.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety.

[FR Doc. 2021–10596 Filed 5–19–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91901; File No. SR–NYSEArca–2020–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend NYSE Arca Rule 5.3–E To Exempt Registered Investment Companies That List Certain Categories of the Securities Defined as Derivative and Special Purpose Securities Under NYSE Arca Rules From Having To Obtain Shareholder Approval Prior to the Issuance of Securities in Connection With Certain Acquisitions of the Stock or Assets of an Affiliated Registered Investment Company

May 14, 2021.

I. Introduction

On August 28, 2020, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 amend NYSE Arca Rule 5.3–E (Corporate Governance and Disclosure Policies) to exempt issuers of certain investment companies, including Exchange Traded Funds (''ETFs''), from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of an affiliated registered investment company. The proposed rule change was published for comment in the **Federal Register** on September 17, 2020.[3] On October 30, 2020, 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 December 1, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed.[6] On December 15, 2020, the Commission published notice of Amendment No. 1

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89834 (September 11, 2020), 85 FR 58090.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90297, 85 FR 70701 (November 5, 2020). The Commission designated December 16, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2020-54/srnysearca202054.htm.*

and instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On March 12, 2021, the Commission extended the period for consideration of the proposed rule change to May 15, 2021.[9] On March 25, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change, which superseded the proposed rule change, as amended by Amendment No. 1.[10] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 2

NYSE Arca Rule 5.3–E(d)(9) requires listed issuers to obtain shareholder approval in connection with the acquisition of the stock or assets of another company if: (i) Any director, officer, or substantial shareholder of the listed company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction (or series of related transactions) and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or (ii) the present or potential issuance of common stock, or securities convertible into or exercisable for common stock (other than in a public offering for cash), could result in an increase in outstanding common shares of 20% or more or could represent 20% or more of the voting power outstanding before the issuance of such stock or securities.

The Exchange proposes to exempt issuers of certain investment companies registered under the 1940 Act,[11] that are listed on the Exchange as Unit Investment Trusts, Investment Company Units, Exchange-Traded Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Active Proxy Portfolio Shares and Managed Portfolio Shares[12] (collectively, ''1940 Act Securities''), from having to comply with the shareholder approval requirement in NYSE Arca Rule 5.3–E(d)(9) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a–8 under the 1940 Act (Mergers of affiliated companies) (''Rule 17a–8'')[13] and does not otherwise require shareholder approval under the 1940 Act or the rules thereunder or any other Exchange rule.[14]

Sections 17(a)(1) and (2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons.[15] Rule 17a–8 provides an exemption from Sections 17(a)(1) and (2) of the 1940 Act for certain mergers of affiliated companies, provided, among other things, that the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company or of any other company or series participating in the transaction, must determine that (i) participation in the merger is in the best interests of its respective investment company, and (ii) the interests of the company's existing shareholders will not be diluted as a result of the transaction.[16] In addition, under Rule 17a–8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met.[17]

Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange states that it believes the provisions of Rule 17a–8 protect against dilution and also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction.[18] In addition, the Exchange explains that Rule 17a–8 does not require the surviving company to obtain shareholder approval in connection with the merger of an affiliated company. The Exchange states that it therefore believes that it is appropriate to exempt issuers of 1940 Act Securities from having to comply with the shareholder approval requirement in NYSE Arca Rule 5.3–E(d)(9) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a–8, which the Exchange states can be both time consuming and expensive.[19]

Notwithstanding the proposed exemption, the Exchange states that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply.[20] The Exchange also states that the adopting release for Rule 17a–8 specifically noted that nothing in Rule 17a–8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.[21]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 90675, 85 FR 83121 (December 21, 2020).

[9] *See* Securities Exchange Act Release No. 91309, 86 FR 14778 (March 18, 2021).

[10] In Amendment No. 2, the Exchange: (1) Revised the proposed rule text to state that the proposed exemption would apply in connection with the acquisition of the stock or assets of an affiliated registered investment company; (2) revised the proposed rule text to state that the proposed exemption would apply if the transaction does not otherwise require shareholder approval under the Investment Company Act of 1940 (''1940 Act'') and the rules thereunder; (3) added a statement that Rule 17a–8 under the 1940 Act does not relieve a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents; (4) clarified the description of Rule 17a–8 and its requirements throughout the discussion; (5) added an explanation for why the proposal would not present concerns regarding voting dilution; and (6) made other clarifications, corrections, and technical changes. Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2020-54/srnysearca202054.htm.*

[11] The Exchange states that approximately 88% of securities listed on the Exchange are issued by investment companies registered under the 1940 Act. *See* Amendment No. 2, *supra* note 10, at n.6.

[12] *See* NYSE Arca Rules 5.2–E(h) (Unit Investment Trusts), 5.2–E(j)(3) (Investment Company Units), 5.2–E(j)(8) (Exchange-Traded Fund Shares), 8.100–E (Portfolio Depositary Receipts), 8.600–E (Managed Fund Shares), 8.601–E (Active Proxy Portfolio Shares) and 8.900–E (Managed Portfolio Shares) for a description of, and listing requirements applicable to, each category of security proposed to be exempted.

[13] 17 CFR 270.17a–8.

[14] *See* proposed Rule 5.3–E.

[15] *See* 15 U.S.C. 80a–17(a)(1)–(2). *See also* the definition of ''affiliated person'' in the 1940 Act, 15 U.S.C 80a–2(a)(3).

[16] *See* Amendment No. 2, *supra* note 10; 17 CFR 270.17a–8(a)(2).

[17] 17 CFR 270.17a–8(a)(3).

[18] *See* Amendment No. 2, *supra* note 10, at 6. With respect to voting dilution, the Exchange cited to a prior filing in which it stated that holders of derivative and special purpose securities either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances. *See id.* at n. 11 (citing Securities Exchange Act Release No. 83324 (May 24, 2018), 83 FR 25076 (May 31, 2018) (SR–NYSEArca–2018–31)).

[19] *See* Amendment No. 2, *supra* note 10, at 5–6.

[20] *See id.* at 8.

[21] *See id.* at n. 5 (citing Investment Company Act Release No. 25666, 67 FR 48511 (July 24, 2002) at n. 18).

modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission finds that the Exchange's proposal to exempt issuers of 1940 Act Securities from the obligation to obtain shareholder approval pursuant to NYSE Arca Rule 5.3–E(d)(9) when they issue securities in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a–8 is consistent with the Act. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in ensuring that exchange-listed companies observe good governance practices, including safeguarding the interests of shareholders with respect to certain potentially dilutive transactions.[24] The Commission believes the right of shareholders to vote in connection with the acquisition of the stock or assets of another company in circumstances that may give rise to dilution or where there may be conflicts of interests is an essential and important one.[25] The Commission, however, believes that, because of the requirements set forth in Rule 17a–8, the requirement to obtain shareholder approval under the Exchange's rules may not be necessary for issuers of 1940 Act Securities in connection with a transaction that complies with Rule 17a–8 and does not otherwise require shareholder approval under the 1940 Act and the rules thereunder or any other Exchange rule.[26]

Specifically, as discussed above, in the case of a merger of affiliated registered investment companies, Rule 17a–8 requires with respect to each registered investment company participating in the merger that the board of directors, including a majority of the directors who are not interested persons of the registered investment company or any other company or series participating in the merger, determines that (i) participation in the merger is in the best interest of the registered investment company, and (ii) the interests of the registered investment company's existing shareholders will not be diluted as a result of the merger.[27] The Commission believes these requirements, including the requirement that a majority of directors who are not interested persons of the registered investment company or any other company or series participating in the merger make such determinations, should act as a safeguard for shareholders against dilution and conflicts of interest.[28] As a result of the requirements of Rule 17a–8, the risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated registered investment company that complies with Rule 17a–8 is sufficiently mitigated. For the same reasons, the Commission believes that the requirements of Rule 17a–8 should help to ensure that conflicts of interests are carefully considered by the board of directors and a majority of the directors who are not interested persons that are required to approve the acquisition, including in cases where shareholder approval would normally be required under the Exchange's rules if such transaction involves a director, officer, or substantial shareholder of the listed company that has an interest in the company or assets to be acquired or the consideration to be paid.[29]

The proposed exemption from the shareholder approval requirements in NYSE Arca Rule 5.3–E(d)(9) is limited in scope. In particular, the proposed exemption from NYSE Arca Rule 5.3–E(d)(9) is limited to issuers of 1940 Act Securities only in connection with the acquisition of the stock or assets of an affiliated registered investment company if such transaction complies with Rule 17a–8. Furthermore, notwithstanding the proposed exemption from the shareholder approval requirement in NYSE Arca Rule 5.3–E(d)(9), other provisions of the Exchange rules, or the 1940 Act and the rules thereunder will still apply and may require shareholder approval.[30] Further, the adopting release for Rule 17a–8 specifically stated that nothing in Rule 17a–8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.[31] Thus, an issuer of a 1940

[22] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] *See, e.g.,* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving equity compensation shareholder approval rules of both the NYSE and the National Association of Securities Dealers, Inc. n/k/a NASDAQ); Securities Exchange Act Release No. 76814 (December 31, 2015), 81 FR 820 (January 7, 2016) (NYSE–2015–02) (approving amendments to the NYSE Listed Company Manual to exempt early stage companies from requirements to obtain shareholder approval in certain circumstances); Securities Exchange Act Release No. 84287 (September 26, 2018) 83 FR 49599 (October 2, 2018) (NASDAQ–2018–008) (approving a Nasdaq proposal to change to the definition of market value for purposes of the shareholder approval rule and eliminate the requirement for shareholder approval of issuances at less than book value but greater than market value). *See also* Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (approving registration of BATS Exchange, Inc. noting that qualitative listing requirements including shareholder approval rules are designed to ensure that companies trading on a national securities exchange will adequately protect the interest of public shareholders).

[25] *See, e.g.,* Securities Exchange Act Release Nos. 86406 (July 18, 2019), 84 FR 35431, 35432 (July 23, 2019) (NYSE–2019–20); 57268 (February 4, 2008), 84 FR 7614, 7616 (February 8, 2008) (AMEX–2006–31).

[26] While Rule 17a–8 requires an affiliated merger to be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met, Rule 17a–8 does not include a requirement for a registered investment company that is the surviving company to obtain shareholder approval in connection with the merger of an affiliated company. *See* 17 CFR 270.17a–8(a)(3).

[27] 17 CFR 270.17a–8(a)(2).

[28] The Commission previously stated when approving amendments to Rule 17a–8 that ''[t]he rule will continue to require that each fund's board (including a majority of disinterested directors) determine that the merger is in the best interests of the fund and will not dilute the interests of shareholders. These are critical determinations boards must carefully consider, particularly when the merger involves significant conflicts of interest.'' *See* Investment Company Act Release No. 25666, July 18, 2002, 67 FR 48511 at 48513 (July 24, 2002). The Commission also stated that directors must request and evaluate any information reasonably necessary to their determinations, and consider and give appropriate weight to all pertinent factors in making their findings under the rule, and in fulfilling the overall duty of care. *Id. See also* Rule 17a–8(a)(2)(ii).

[29] The Commission notes that it also previously approved an NYSE rule proposal that exempted registered investment companies under the 1940 Act from a broker vote prohibition for election of directors. In approving the proposal the Commission concluded that the different regulatory regime for registered investment companies supports the exemption. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92), at 33303.

[30] *See* NYSEArca Rule 5.3–E(d), which sets forth the Exchange's shareholder approval requirements, including, among others, for issuances involving a change of control and equity compensation. If shareholder approval is not required under one provision of the Exchange's rule, it may still be required under another provision of the rule.

[31] *See supra* note 21.

Act Security may still be required to obtain shareholder approval in connection with the acquisition of the stock or assets of an affiliated company even if such transaction complies with Rule 17a–8 if such transaction would require shareholder approval under other applicable Exchange rules, another provision of the 1940 Act or the rules and regulations thereunder, state law, or a fund's organizational documents.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 to 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–54 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–NYSEArca–2020–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–54, and should be submitted on or before June 10, 2021.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, the Exchange: (1) Revised the proposed rule text to state that the proposed exemption would apply in connection with the acquisition of the stock or assets of an affiliated registered investment company; (2) revised the proposed rule text to state that the proposed exemption would apply if the transaction does not otherwise require shareholder approval under the 1940 Act and the rules thereunder; (3) added a statement that Rule 17a–8 does not relieve a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents; (4) clarified the description of Rule 17a–8 and its requirements throughout the discussion; (5) added an explanation for why the proposal would not present concerns regarding voting dilution; and (6) made other clarifications, corrections, and technical changes.[32] Amendment No. 2 provided greater clarity to the proposal. The changes and additional clarifying information in Amendment No. 2 strengthen the proposal and assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[33] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NYSEArca–2020–54), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10606 Filed 5–19–21; 8:45 am]

BILLING CODE 8011–01–P

[32] *See supra* note 10.

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91897; File No. SR–BOX–2021–11]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Rule 7135 (Execution and Pro Rata Priority) and Rule 8055 (Lead Market Makers)

May 14, 2021.

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 29, 2021, BOX Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish Rule 7135 (Execution and Pro Rata Priority) and Rule 8055 (Lead Market Makers). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Purpose

The BOX Options Market launched on April 27, 2012 as a fully automated, Price/Time priority execution system.[3] Currently, BOX Rule 7130(a)(4) provides that the Trading Host[4] accepts buy and sell orders in the respective sequence in which the Trading Host receives such orders and will have a single execution algorithm based on Price/Time priority.[5] At this time, the Exchange proposes to establish Rule 7135 which will govern Pro Rata execution and priority on BOX. In order to make clear that only one of the two execution algorithms is applicable to a particular options class, BOX proposes to add introductory language to both Rule 7130(a)(4) and proposed Rule 7135 which states that that the Exchange will determine to apply, for each option class, one of the base execution algorithms described in Rule 7130(a)(4) (Price/Time Priority) or Rule 7135(b) (Pro Rata Priority). The Exchange will issue a Regulatory Circular specifying which execution algorithm will govern which options class any time it is modified.[6] The Exchange notes that the proposed Pro Rata execution algorithm and priority rules discussed herein will apply only to electronic orders on the Exchange. Qualified Open Outcry Orders (''QOO Orders'') executed on the BOX Trading Floor will continue to be subject to the priority and allocation rules detailed in the 7600 rules series regardless of whether the options class is designated for Pro Rata or Price/Time priority in the electronic market.[7] All QOO Orders are processed through the BOX Trading Host system which enforces the rules detailed in the 7600 series.

Proposed Rule 7135(b) states that the System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at that price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded down to the nearest whole number. The Exchange notes that proposed Rule 7135(a) and (b) are similar to rules that currently exist on another options exchange.[8]

Further, the Exchange proposes that (1) If there are residual contracts to be filled after the pro rata calculation has been completed, such contracts will be allocated, with no more than one contract per Participant, in the following sequence: (A) The Participant in the pool who has the largest fractional amount based on the pro rata calculation (trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price) will receive the first contract, and each successive contract (if any) will be allocated to each subsequent Participant who has the next largest fractional share; (B) If the last residual contracts are to be allocated between two or more Participants with the same fractional amount, then the Participant with the first time priority in the pro rata pool will be allocated the next contract. Each successive contract (if any) will be allocated in the same manner. The Exchange notes that a similar rule currently exists at another options exchange.[9]

The following example illustrates how the Exchange's system will execute with rounding and residual contracts:[10]

Market: $2.00 (86) × $2.03 (23)
Public Customer (PC): Buy order 7 contracts @$2.00
Market Maker A (MMA) Quote: $2.00 (55) × $2.03 (10)
Market Maker B (MMB) Quote: $2.00 (12) × $2.03 (5)
Market Maker C (MMC) Quote: $2.00 (12) × $2.03 (8)
Sell order received: 27 contracts @$2.00

Public Customer Order is filled in its entirety and allocated 7 contracts at $2.00.

MMA's quote represents 69.62% (55/79) of all orders and quotes resting at $2.00
- 69.62% of 20 contracts executed for MMA = 13.92,[11] rounded down to 13 contracts

MMB's quote represents 15.19% (12/79) of all orders and quotes resting at $2.00
- 15.19% of 20 contracts executed for MMB = 3.04,[12] rounded down to 3 contracts

MMC's quote represents 15.19% (12/79) of all orders and quotes resting at $2.00
- 15.19% of 20 contracts executed for MMC = 3.04,[13] rounded down to 3 contracts

The Exchange notes, due to rounding down, there will be 1 remaining residual contract from the incoming sell order (7 (Public Customer) + 13 (MMA) + 3 (MMB) + 3 (MMC) = 26 out of 27 contracts allocated pursuant to Pro Rata calculation). MMA was the Participant with the largest fractional amount

[3] *See* Securities Exchange Act Release No. 66871 (April 27, 2012) (File No. 10–206). See Securities Exchange Act Release No. 66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (File No. 10–206).

[4] *See* Rule 100(a)(68). The term ''Trading Host'' means the automated trading system used by BOX for the trading of options contracts.

[5] The following criteria will determine order matching and trade execution for Price/Time priority: (i) *Price.* A buy order at the highest price and a sell order at the lowest price have priority over other orders in the same series/strategy; and (ii) *Time.* A buy/sell order at the best price will trade in sequence according to the time it was accepted by the Trading Host, from earliest time stamp to latest. (iii) *Trade.* A trade occurs when orders or quotations match in the Trading Host. An order entered into the Trading Host that matches an order in the Trading host will trade at the price of the order in the Trading Host up to the available size.

[6] Price/Time Priority as described in Rule 7130(a)(4) will be in effect for all options classes until otherwise specified by the Exchange pursuant to a Regulatory Circular.

[7] Currently, on the BOX Trading Floor, QOO Orders (1) may not trade through any equal or better priced Public Customer bids or offers on the BOX Book or any non-Public Customer bids or offers on the BOX Book that are ranked ahead of such equal or better priced Public Customer bids or offers, and (2) may not trade through any non-Public Customer bids or offers on the BOX Book that are priced better than the proposed execution price. *See* BOX Rule 7600(c)(1). In addition, QOO Orders are subject to the allocation provisions detailed in Rule 7600(d). The Exchange notes that QOO Orders will continue to execute pursuant to these rules. To illustrate, consider the following: Options on XYZ are designated to execute through the Pro Rata algorithm pursuant to proposed Rule 7135(b) for electronic orders. Two XYZ buy orders rest on the BOX Book as follows (in the order of which the orders were received by the Exchange). The first order is a Broker Dealer Order to buy 15 XYZ at $1.00 and the second order is a Public Customer Order to buy 7 XYZ at $1.00. An incoming QOO Order to sell 25 XYZ is received by BOX. Pursuant to 7600(c) and (d), the incoming QOO Order to sell 25 XYZ will execute against the orders as follows: Broker Dealer will trade 15 XYZ at $1.00 and Public Customer will trade 7 XYZ at $1.00. The remaining quantity of 3 will trade against the QOO contra-side order. The Exchange notes that in an electronic class designated as Pro Rata, the BOX system will continue to rank orders on the BOX Book in price-time priority in order for QOO Orders to execute against orders on the BOX Book pursuant to the priority and allocation provisions detailed in 7600(d);however, orders on BOX Book in such class will be ranked in Pro Rata priority at the time of an electronic order execution.

[8] *See* Nasdaq BX LLC (''Nasdaq BX'') Options 3, Section 10(a)(1) and (a)(1)(B) (Order Book Allocation).

[9] *See* NYSE American LLC (''NYSE Amer'') Rule 964NY(b)(3)(B).

[10] The Exchange notes in the example, the orders and quotes listed are in the order in which they were received, and all Priority Overlays are in effect. The example is intended to illustrate how rounding and residual contracts work pursuant to this proposal.

[11] MMA's fractional amount is 0.92.

[12] MMB's fractional amount is 0.04.

[13] MMC's fractional amount is 0.04.

pursuant to the Size Pro-Rata execution calculation, specifically, 0.92 contracts. Therefore, MMA would receive the 1 remaining residual contract.[14] The Exchange believes the proposed method for allocating residual contracts is a wholly sufficient process to fill any remaining contracts particularly because there is no theoretically plausible situation where the number of residual contracts is greater than the number of market participants being allocated under the priority scheme.

The Exchange next proposes Rule 7135(c) which governs the priority overlays applicable to the Size Pro Rata execution algorithm where the Exchange may apply designated Participant priority overlays detailed below when the Size Pro Rata execution algorithm is in effect. First, the Exchange proposes Rule 7135(c)(1) which details the Public Customer Priority. Specifically, the Exchange proposes that the highest bid and lowest offer shall have priority on a Pro Rata basis except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. For purposes of this Rule, a Public Customer order does not include a Professional Order. Public Customer Priority is always in effect when Size Pro-Rata execution algorithm is in effect. The Exchange notes that the proposed Public Customer Priority overlay is similar to a rule that currently exists at another exchange.[15]

Next, the Exchange proposes Rule 7135(c)(2) which details Lead Market Maker (''LMM'') priority. An LMM may be assigned by the Exchange in each option class in accordance with proposed Rule 8055 detailed herein. After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's bid/offer is at or improves on the Exchange's disseminated price, the LMM will be afforded a participation entitlement, unless the incoming order to be allocated is a Preferenced Order,[16] in which case allocation would be pursuant to Rule 7135(c)(3) discussed below. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Match. Rounding will be up or down to the nearest integer. The LMM participation entitlement is as follows (i) A BOX Options LMM shall receive the greatest of: (A) Lead Market Maker's Size Pro-Rata share under subparagraph (c)(4) (''Market Maker Priority''); (B) 50% of remaining interest if there is one or no other Market Maker at that price; (C) 4C0% of remaining interest if there is two other Market Makers at that price; or (D) 30% of remaining interest if there are more than two other Market Makers at that price. Further, the Exchange proposes Rule 7135(c)(2)(ii) which states that if the LMM is also the Preferred Market Maker, the LMM may receive the greater of the Preferred Market Maker participation entitlement set forth in subsection (c)(3) below or the LMM participation entitlement set forth in (c)(2)(i).

Further, the Exchange proposes Rule 7135(c)(2)(iii) which states that orders for 5 contracts or fewer shall be allocated in their entirety to the LMM. The Exchange will review this provision quarterly and will maintain the small order size at a level that will not allow orders of 5 contracts or less executed by the LMM to account for more than 40% of the volume executed on the Exchange. The Exchange notes that proposed Rule 7135(c)(2)(i)–(iii) are similar to rules in place at another options exchange.[17]

The following example further illustrates how the Exchange's system will execute trades using the Pro-Rata allocation method including the PC, LMM, and MM priority overlays discussed herein:

Market: $1.00 (50)—$1.10 (50)
Public Customer: Sell 7 @$1.10
Lead Market Maker A (LMMA) Quote: $1.00 (20)–$1.10 (10)
Market Maker B (MMB) Quote: $1.00 (10)– $1.10 (15)
Market Maker C (MMC) Quote: $1.00 (20)–$1.10 (18)
Buy order received: Buy 27 @$1.10

Size Pro-Rata Results

- PC order is filled in its entirety and is allocated 7 contracts at $1.10. There are 20 contracts remaining of the inbound order.
- LMMA's quote represents 23.26% (10/43) of all orders and quotes resting at $1.10
  - 23.26% of 20 contracts executed for LMMA = 4.65, rounded down to 4 contracts
- MMB's quote represents 34.88% (15/43) of all orders and quotes resting at $1.10
  - 34.88% of 20 contracts executed for MMB = 6.97, rounded down to 6 contracts
- MMC's quote represents 41.86% (18/43) of all orders and quotes resting at $1.10
  - 41.86% of 20 contracts executed for MMC = 8.37, rounded down to 8 contracts

LMM Percentage Allocation Results

- PC is allocated 7 contracts @$1.10. There are 20 contracts remaining of the inbound order.
- LMMA is allocated 8 contracts @ $1.10.[18]

The LMM percentage allocation result prevails because the LMM will receive the higher quantity of 8 contracts.[19]

Market Makers will be allocated according to Size Pro-Rata as follows:

- MMB's quote represents 45.45% (15/33) of all orders and quotes resting at $1.10
  - 45.45% of 12 contracts (remaining from incoming Buy order of 27) executed for MMB = 5.45,[20] rounded down to 5 contracts
- MMC's quote represents 54.54% (18/33) of all orders and quotes resting at $1.10
  - 54.54% of 12 contracts executed for MMC = 6.54,[21] rounded down to 6 contracts

The Exchange notes, due to rounding down, there will be 1 remaining residual contract from the incoming order (12 (remaining)—5 (MMB)—6 (MMC) = 11 contracts). MMC was the

[14] *See* proposed Rule 7135(b)(1). The Exchange notes, in the aforementioned example MMB and MMC both had an equal fractional amount of 0.04 contracts. There could be instances where the calculation methodology results in more than 1 residual contract. In the example above, assume there was 2 residual contracts, in such a scenario MMB would have received the second (and last) residual contract because it was first in time priority. The Exchange believes the proposed rounding and residual contract method is appropriate and fair and will be clear to Participants. Rounding down is a more efficient way to calculate the distribution of non-whole number allocations because it avoids having the Exchange break ties when a Participant is entitled to half (0.5) of a contract. In addition, the Exchange believes Participants with the largest fractional shares should receive the first residual contracts because the allocation will more closely meet the fill expectations of market participants.

[15] *See* Nasdaq BX Rule Options 3, Section 10(a)(1)(C)(2)(i).

[16] The term ''Preferenced Order'' means any order, whether on a single option instrument or on a Complex Order Strategy, for which a Preferred Market Maker is designated with respect to such order, upon submission of such order to BOX. *See* BOX Rule 7300(a)(1).

[17] *See* Nasdaq BX Options 3, Section 10(a)(1)(C)(2)(ii).

[18] Pursuant to proposed Rule 7135(c)(2)(i)(C), LMMs participation entitlement is 40% because there are two other Market Makers at that the same price. Specifically, LMM receives 40% of the remaining 20 contracts, 8 contracts total.

[19] *See* proposed Rule 7135(c)(2)(i).

[20] MMB's fractional amount is 0.45.

[21] MMC's fractional amount is 0.54.

Participant with the largest fractional amount pursuant to the Size Pro-Rata execution calculation, specifically, 0.54 contracts. Therefore, MMC would receive the 1 remaining residual contract.

Next, the Exchange proposes Rule 7135(c)(3) which details Preferred Market Maker [22] Priority. After all Public Customer orders at the same price or better have been fully executed, upon receipt of a Preferenced Order pursuant to Rule 7300, provided the Preferred Market Maker's quote is at the NBBO, the Preferred Market Maker will be afforded a participation entitlement. Preferred Market Maker participation entitlements will apply only after the Opening Match. When the Preferred Market Maker is at the same price as a non-Public Customer Order or Market Maker quote, pursuant to the Preferred Market Maker participation entitlement, the Preferred Market Maker shall receive, with respect to a Preferenced Order, the greatest of: (A) 60% of remaining interest if there is one other non-Public Customer Order or Market Maker quote at that price; (B) 40% of remaining interest if there are two or more other non-Public Customer Orders or Market Maker quotes at that price; or (C) the Preferred Market Maker's Size Pro Rata share under subparagraph (c)(4). The Exchange further proposes Rule 7135(c)(3)(ii) which states that the Preferred Market Maker is also entitled to orders of 5 contracts or fewer under subparagraph (c)(2)(iii) if the Preferred Market Maker is also the Lead Market Maker and the incoming Order is for 5 contracts or fewer. If the Preferred Market Maker is not the Lead Market Maker, the Preferred Market Maker will be afforded the participation entitlement detailed in Rule 7135(c)(3)(i). The Exchange notes that proposed Rule 7135(c)(3) is similar to rules at another options exchange in the industry.[23]

The following example further illustrates how the Exchange's system will execute trades using the Pro-Rata allocation method and the PMM priority overlay discussed herein:

Market: $1.00 (43)–$1.15 (16)
Public Customer: Sell 1@$1.15
Preferred Market Maker A (PMMA)[24] *Quote:* $1.00 (10)–$1.15 (4)
Market Maker B (MMB) Quote: $1.00 (15)–$1.15 (5)
Market Maker C (MMC) Quote: $1.00 (18)–$1.15 (6)
Buy order received: Buy 5 @$1.15

Size Pro-Rata Results

- PC order is filled in its entirety and is allocated 1 contract. There are 4 contracts remaining of the inbound order.
- PMMA's quote represents 26.66% (4/15) of all orders and quotes resting at $1.15
  - 26.66% of 4 contracts executed for PMMA = 1.06, rounded down to 1 contract
- MMB's quote represents 33.33% (5/15) of all orders and quotes resting at $1.15
  - 33.33% of 4 contracts executed for MMB = 1.33, rounded down to 1 contract
- MMC's quote represents 40.00% (6/15) of all orders and quotes resting at $1.15
  - 40.00% of 4 contracts executed for MMC = 1.60, rounded down to 1 contract

PMM Percentage Allocation Results

- PC is allocated 1 contract @$1.15. There are 4 contracts remaining of the inbound order.
- PMMA is allocated 1.60 contracts—rounded down to 1 contract @$1.15.[25]

Based on the calculations above, the PMM percentage allocation result prevails because PMMA will receive the higher quantity of 1.60 contracts (rounded down to 1 contract).[26]

Market Makers allocated according to Size Pro-Rata as follows:

- MMB's quote represents 45.45% (5/11) of all orders and quotes resting at $1.15
  - 45.45% of 3 contracts (remaining from incoming order) executed for MMB = 1.36,[27] rounded down to 1 contract
- MMC's quote represents 54.54% (6/11) of all orders and quotes resting at $1.10
  - 54.54% of 3 contracts executed for MMC = 1.63,[28] rounded down to 1 contract

The Exchange notes, due to rounding down, there will be 1 remaining residual contract from the incoming order (5 (remaining)—1 PC–1 (PMMA)—1 (MMB)—1 (MMC) = 4 contracts). MMC was the Participant with the largest fractional amount pursuant to the Size Pro-Rata execution calculation, specifically, 0.63 contracts. Therefore, MMC would receive the 1 remaining residual contract.

The Exchange next proposes Rule 7135(c)(4) which details Market Maker Priority. After all Public Customer orders have been fully executed and LMM and Preferred Market Maker participation entitlement applied, if applicable, BOX Market Makers (excluding LMMs and Preferred Market Makers) shall have priority over all other Participant orders at the same price. If there are two or more BOX Market Maker quotes and orders for the same options series at the same price, those shall be executed based on the Size Pro Rata execution algorithm. Lastly, the Exchange proposes Rule 7135(c)(5) which states that if there are contracts, such contracts shall be executed based on the Size Pro-Rata execution algorithm. The Exchange notes that a similar rule currently exists at another options exchange.[29]

The Exchange next proposes to establish Rule 8055 which details designation and obligations of Lead Market Makers. First, the Exchange proposes 8055(a) (LMM Designation) which states that the Exchange may designate one Market Maker [30] in good standing with an appointment in a class as an LMM. The term ''Lead Market Maker'' (''LMM'') has the meaning set forth in this Rule 8055. The proposal provides that the Exchange will appoint an LMM for a term of no less than the time until the end of the then-current expiration cycle (''term''), and the Exchange may approve one Market Maker to act as an LMM in each class during regular trading hours for terms of at least one month.[31] In addition, the Exchange proposes factors for determining whether the Exchange will appoint a Market Maker as an LMM. Factors to be considered by the Exchange in selecting LMMs include:

[22] *See* BOX Rule 7300(a)(2). The term ''Preferred Market Maker'' or ''PMM'' means a Market Maker designated as such by a Participant with respect to an order submitted by such Participant to BOX.

[23] *See* Nasdaq ISE LLC (''ISE'') Options 3, Section 10(c)(1)(C).

[24] In this example, assume PMMA is not a designated LMM in the class of the incoming order.

[25] Pursuant to proposed Rule 7135(c)(3)(i), PMMAs participation entitlement is 40% because there are two other Market Makers at that the same price. Specifically, PMMA receives 40% of the remaining 4 contracts, 1.60 contracts total—rounded down to 1 contract.

[26] *See* proposed Rule 7135(c)(3)(i). The Exchange notes that the PMM's allocation in Size Pro-Rata was 1.06 contracts. The system will take the greatest of the percentage allocation and the Size Pro-Rata calculation. Because the percentage allocation resulted in a higher allocation (by fractional amount), the percentage allocation prevails.

[27] MMB's fractional amount is 0.36.

[28] MMC's fractional amount is 0.63.

[29] *See* Nasdaq BX Options 3, Section 10(a)(1)(C)(2)(iv).

[30] Currently, Market Makers on BOX are subject to the rules and requirements detailed in the rule 8000 series. With respect to continuous quoting obligations, BOX Market Makers are required to ''post valid quotes at least sixty percent (60%) of the time that the classes are open for trading. These obligations will apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis.'' *See* BOX Rule 8050(e).

[31] The Exchange notes this is substantively identical to Cboe's rule, except that Cboe's rule text provides for the possibility of appointing more than one LMM to a particular class which BOX does not seek to establish at this time.

Adequacy of capital, experience in trading options, and adherence to Exchange rules and ability to meet the obligations specified in this Rule 8055.[32]

Next, the Exchange proposes Rule 8055(b) which states that the Exchange may remove an LMM if the LMM fails to meet the obligations set forth in Rule 8055(c), or any other applicable Rule. An LMM removed under the proposed Rule may seek review of that decision under Rule Series 13000. If an LMM is removed or if for any reason an LMM is no longer eligible for or resigns its appointment or fails to perform its duties, the Exchange may designate an LMM for the remainder of the term or shorter time period designated by the Exchange. The Exchange notes that this proposed rule language is identical to a rule currently in place at another options exchange.[33]

The Exchange next proposes to adopt Rule 8055(c) which governs Lead Market Maker Obligations on BOX. Specifically, each LMM must fulfill all the obligations of a Market Maker under the rule series 8000 and satisfy each of the following requirements: (i) During regular trading hours, provide continuous electronic quotes by submitting continuous bids and offers in 99% of the non-adjusted option [34] series in a LMM's appointed class for 90% of the time the Exchange is open for trading in such options class. This obligation does not apply to any adjusted series or intra-day add-on series on the day during which such series are added for trading. An LMM may receive a participation entitlement in intra-day add-on series on the day during which such series are added for trading if it elects to quote in such series provided the LMM satisfies the quoting obligations in this Rule. The Exchange notes that this rule is similar to a rule at another exchange.[35]

The Exchange further proposes the following obligations for LMMs in proposed Rule 8055(c)(2) make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes it trades; [36] (3) continue to act as an LMM and fulfill the obligations of an LMM until the end of its term or until the Exchange relieves the LMM of its approval to act as an LMM or of its appointment and obligations to act as an LMM in a particular class and (4) promptly inform the Exchange of any material change in financial or operational condition or in personnel. The Exchange notes that the proposed requirements discussed above are similar to requirements currently in place for LMMs at other options exchanges.[37]

Lastly, the Exchange proposes Rule 8055(d) which governs LMM Compliance. Rule 8055(d) states that compliance with LMM quoting

[32] The Exchange notes the proposed rule 8055(a) is similar to Cboe Rule 3.55(a) with a few minor differences. Again, the Exchange proposes to only designate one (rather than one or more) Lead Market Maker in good standing per class. The Exchange believes appointing only one Lead Market Maker per class is appropriate at BOX. The Exchange also notes that another exchange allows only one Lead Market Maker per class for LMM designation. *See* Nasdaq BX, Inc (''Nasdaq BX'') Rule Options 2, Section 3(A)(a). Further, in proposed Rule 8055(a), the Exchange did not copy any rule language that relates to Cboe's On-Floor LMMs because, under the current proposal, the Exchange only wishes to establish designations for electronic LMMs (referred to as ''Off-Floor LMMs'' at Cboe). If the Exchange seeks to establish Floor LMMs in the future, it will file another proposal with the Commission at that time. Further, with regard to proposed Rule 8055(a), the Exchange notes that it did not include any mention of the DPM account type as this account type does not exist on BOX. The Exchange notes, that while being different market participant types within Cboe's market, the LMMs and DPMs have substantially similar functions and obligations (*i.e.,* adequacy of capital, experience trading options, historical adherence to exchange rules, willingness and ability to promote the exchange etc.). The primary difference between LMMs and DPMs relates to the length of their appointment terms (*e.g.,* LMM receives an appointment for a limited term while a DPM serves until it resigns or is removed by the exchange). *Compare* Cboe Rule 3.53 (DPMs), *with* Cboe Rule 3.55 (LMMs). Given that the Exchange is proposing to adopt an electronic LMM (similar to Cboe ''Off-Floor LMM'' or ''Off-Floor DPM'') participant type, when considering the selection of electronic LMMs, the factors to be considered may also include, but are not limited to, any one or more of the following: (1) Number and experience of support personnel performing functions related to LMM's business; (2) observance of generally accepted standards of conduct; (3) regulatory history of applicant LMM; (4) operational capacity; and (5) in the event one of more LMMs or associated persons is or has previously been an LMM or associated with an LMM, adherence by such LMM to the requirements set forth in proposed Rule 8055 during the time period in which such person(s) held such position with the LMM. These factors are substantially similar to the DPM factors listed on Cboe. *See* Cboe Rule 3.53(b). Because the obligations of the two participant types are substantially similar and the Exchange does not have and is not proposing to adopt a DPM participant type, it is not proposing to adopt any similar rule text related to DPM obligations within its proposed Rule 8055. The Exchange did not include language that states that ''an LMM generally will operate on the Exchange's trading floor'' as this statement is not an accurate representation of how LMMs will operate on BOX. Lastly, the Exchange notes that it did not include Cboe Rule 3.55(a)(1), (2) and (3) as these provisions provide for situations in which an LMM will operate on the trading floor, and BOX's current proposal only seeks to establish electronic LMMs at this time.

[33] *See* Cboe Rule 3.55(b).

[34] *See* BOX Rule 7300(a)(2). As defined under BOX Rule 7300, ''[a]n ''adjusted option series'' is an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stocks or Units.'' That definition has the same meaning within this proposal. Therefore, non-adjusted option series have not been modified as a result of a corporate action and therefore continue to represent the delivery of 100 shares.

[35] *See* Cboe Exchange Inc. (''Cboe'') Rule 5.55(a)(1). First, the Exchange notes that it is only copying the ''99% of the Non-Adjusted Option series'' quoting obligation language and not including the ''100% of the non-adjusted options series minus one call-put pair'' language. The Exchange understands the 100% obligation to be a legacy Cboe rule that was put in place due to proprietary products traded on its exchange. As such, the Exchange does not believe it is appropriate to include in its proposal discussed herein. Furthermore, the Exchange believes this is reasonable because the proposal still requires the LMMs to continuously quote a significant part of the trading day in a significant percentage of the series. Next, the Exchange notes that it is not including Cboe Rule 5.55(a)(1)(B) as BOX intends to only appoint one Lead Market Maker per class. As such, the Cboe rule detailing that the LMM continuous quoting obligation may be satisfied individually or collectively with LMMs of the same Participant is unnecessary. The Exchange also notes that it is not copying Cboe Rule 5.55(a)(2) as the Exchange's proposal will not require its Lead Market Makers to enter opening quotes. The Exchange notes that another exchange does not require its Lead Market Makers to quote during the opening. *See* Securities Exchange Act Release No. 89731 (September 1, 2020), 85 FR 55524 (September 8, 2020)(SR–BX–2020–016). The BX filing states that ''. . .BX Lead Market Makers are not required to quote during the opening, that will remain unchanged. Today, BX Lead Market Makers may quote during the opening, but they are not obligated to quote.'' Further, the Exchange notes that it is not copying Cboe Rule 5.55(a)(2)(A) and (B) as they relate to the opening quote obligation at Cboe which, as discussed above, BOX does not intend to require in this proposal.

[36] The Exchange notes this obligation is substantially similar to the current requirement under the BOX Rules that obligate Market Makers to maintain a market in their appointed classes in a manner that enhances the depth, liquidity and competitiveness of the market. *See* BOX Rule 8040(a)(1). The Exchange does not believe the proposed rule text imposes a new obligation on LMMs, as the current rules require Market Makers to be competitive; rather, it is replicated for clarity and to support the easier readability of the Exchange's rulebook.

[37] *See* Cboe Rule 5.55(a)(3) through (4) and NYSE Arca Rule 6.82–O(c)(14). The Exchange notes that proposed Rule 8055(c)(1) (2) and (3) are identical to Cboe and proposed Rule 8055(c)(4) is identical to NYSE Arca. The Exchange believes that Arca's rule better aligns with the surveillance efforts currently in place at the Exchange. The Exchange notes, Market Makers are not currently subject to this notification obligation. The Exchange believes that imposing the proposed obligation to notify the Exchange upon any material changes in finances or operations will assist the Exchange in regulating LMMs and surveilling its marketplace. In particular, the Exchange will be able to more closely monitor LMM compliance with Exchange rules (*e.g.,* position limits), ensure adequate capitalization levels of its Participants, and be made aware of any material organizational changes that may impact the Exchange's business operations or regulatory efforts (*i.e.,* mergers/combinations, Participants acting as Market Makers for the first time, changes in ownership and control) so the Exchange may act as it deems necessary. The Exchange believes that the proposed obligation is appropriate for LMMs and not regular Market Makers on BOX because LMMs are held to a higher quoting obligation as discussed herein.

obligation applies to all of an LMM's appointed classes collectively. The Exchange will determine compliance by an LMM with this quoting obligation on a monthly basis. However, determining compliance with this obligation on a monthly basis does not relieve an LMM from meeting this obligation on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against an LMM for failing to meet this obligation each trading day. The Exchange notes that proposed Rule 8055(d) is similar to another rule in place at an options exchange.[38]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[39] in general, and Section 6(b)(5) of the Act,[40] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest, because it will provide additional execution algorithms and priority overlays on BOX, which currently operate on other exchanges, as explained in detail herein.[41] These additional execution algorithms and priority overlays provide Participants with additional choices among the many competing exchanges with regard to their execution needs and strategies and provision of liquidity and quoting. The Exchange believes that adding this flexibility to its rules will allow for greater customization, resulting in enhanced service to its Participants, which would continue to be a purely objective method for allocating option trades. The Exchange believes that, while the price/time execution algorithm encourages liquidity providers to set the price, the Size Pro Rata execution algorithm encourages liquidity providers to add size to a bid/offer at a particular price, even if that Participant did not set the price. Rewarding liquidity providers (through the proposed participation entitlements discussed herein) who add size should encourage larger displayed markets, which should, in turn, benefit and protect investors and the public interest.

Further, BOX operates in an intensely competitive environment and seeks to offer the same or similar services that its competitors offer and in which its Participants would find value. As such, the Exchange believes the proposed addition of the Pro Rata execution algorithm will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing market participants an additional venue to execute trades and provide liquidity using the Pro Rata execution algorithm (if designated by the Exchange). The Exchange further notes that the Exchange's ability to determine which execution algorithm—Price/Time or Pro Rata—to apply to each option class is appropriate as the Commission has already found this practice consistent with the Act.[42] The Exchange believes the proposed priority overlays applicable to the Size Pro Rata execution algorithm are consistent with the Act. First, the Exchange notes that the Commission has already found that these priority overlays to be consistent with the Act as the overlays exist on other exchanges in the industry as discussed herein. The Exchange believes that the proposed Public Customer priority overlay is appropriate as it recognizes the unique status of Public Customers in the marketplace and the role their orders play in price competition and adding depth to the marketplace. Further, the Exchange believes the proposal seeks to incentivize Public Customer order flow to the Exchange in order to compete and interact with other market participants who are able to quote and submit orders in greater quantities. As such, the Exchange believes the proposed Public Customer priority overlay can increase price competition and add depth to the marketplace. For these reasons, the Exchange also believes that the Public Customer priority overlay is designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Exchange believes that offering LMMs participation entitlements promotes just and equitable principles of trade because LMMs will be held to a higher standard as compared to other market participants including Market Makers. Currently, a Market Maker is required to quote at least 60% of the time that the classes are open for trading.[43] Under this proposal, LMMs are being held to a higher obligation and therefore are being rewarded with participation entitlements. The proposed rule change supports the quality of the Exchange's trading market by helping to incentivize that LMMs will be required to meet a higher quoting standard in order to reap the benefits of the proposed participation entitlement. The Exchange believes this proposed change to offer participation entitlements to LMMs is offset by LMMs' continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

The Exchange believes that the Preferred Market Maker participation entitlement is designed to promote just and equitable principles of trade and to protect investors and the public interest, because it strikes a reasonable balance between encouraging vigorous price competition and rewarding Preferred Market Makers for their unique duties. In order to receive an allocation preference, Preferred Market Makers must meet heightened quoting requirements as Market Makers, and also be quoting at the NBBO at the time the Preferenced Order is received. Heightened quoting requirements mean that Preferred Market Makers must maintain a continuous two-sided market pursuant to Rule 8050(c)(1), throughout the trading day, in 99% of the non-adjusted option series of each class for which it accepts Preferenced Orders, for 90% of the time the Exchange is open for trading in each such option class; provided that it is not required to so quote in intra-day add-on series or series that have a time to expiration of nine months or more.[44] The Exchange also notes that Preferred Market Makers currently receive a Preferred Allocation in the Price/Time priority execution algorithm.[45] The Exchange believes that the proposed Preferred Market Maker participation entitlement is consistent with the Act because it will provide important incentives for Preferred Market Makers on BOX to provide liquidity which, in turn, provides for greater opportunity for executions, tighter spreads and better pricing for all Participants. Additionally, the Exchange believes that the proposed Preferred Market Maker participation entitlement

[38] *See* Cboe Rule 5.55(e). The Exchange notes that it is not proposing to adopt subsections (1) and (2) of Cboe Rule 5.55(e) because as previously mentioned herein, the Exchange is only proposing to establish electronic LMMs and Cboe Rule 5.55(e)(1) and (2) account for varying obligations between their On-Floor LMMs and Off-Floor LMMs which are not applicable to the Exchange's proposal.

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *See supra* notes 8, 9, 15, 17, 23, and 29.

[42] *See* Securities Exchange Act Release No. 62317 (June 17, 2010), 75 FR 36147 (June 24, 2010) (SR–CBOE–2010–038). In its Order Approving Cboe's proposal related to the hybrid matching algorithm, the Commission states that ''. . . the incoming order will be allocated among market participants using the underlying matching algorithm—price-time or pro-rata—both of which the Commission already has found consistent with the Act.'' *See also* See Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (Adopting CBOE Rule 6.45B).

[43] *See* BOX Rule 8050(e).

[44] *See* Rule 7300(a)(2).

[45] *See* BOX Rule 7300(c)(2).

percentages adequately balances the aim of rewarding the Preferred Market Maker with the aim of leaving a sizeable enough portion of the incoming Preferenced Order for the other Market Makers quoting at the same price. Further, the Exchange notes that Preferred Market Makers at other exchanges receive the same participation entitlement when the Pro-Rata execution is designated by the respective exchange.[46]

The Exchange believes the Market Maker participation entitlement is appropriate as Market Makers are required to quote at least 60% of the time that the classes are open for trading. The Exchange believes the proposed participation entitlement strikes a reasonable balance between encouraging vigorous price competition and rewarding Market Makers for their unique duties. Further, the Exchange notes that a similar rule exists at another exchange when the Pro-Rata execution algorithm is enabled.[47]

The proposed rule relating to LMM Designation (proposed Rule 8055(a)) seek to establish and promote just and equitable principles of trade by allowing the Exchange to designate one Market Maker in good standing with an appointment in a class as an LMM. The Exchange intends to foster cooperation and coordination by taking into account certain factors to be considered in selecting an LMM including the LMM's experience and capitalization and other information to ensure that an LMM is qualified when allocated an options series. The Exchange again notes that a similar rule exists at another options exchange.[48]

With respect to an LMM's obligations, the Exchange would require LMMs be subject to heightened standards as compared to other Market Makers. Similar to Market Makers, LMMs add value through continuous quoting and the commitment of capital. In addition, the LMM quoting requirements promote liquidity and continuity in the marketplace in requiring LMMs to be held to a higher standard of quoting. The Exchange believes that the proposed rule change supports the quality of the Exchange's markets because it maintains the quoting obligations of Market Makers as LMMs at 99% of the non-adjusted option series in a LMM's appointed class for 90% of the time the Exchange is open for trading in such options class. LMM transactions must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. The Exchange believes that the obligations set forth for LMMs in its proposed rules will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. Further, the Exchange notes that a similar rule exists at another options exchange.[49] Therefore, the proposed rule change also protects investors and the public interest by creating more uniformity and consistency among the Exchange's rules related to LMM obligations.

Lastly, with respect to proposed Rule 8055(d), LMM Compliance, the Exchange believes that adopting the proposed standards will enhance compliance efforts by Lead Market Makers and the Exchange. The proposed rule text fosters cooperation and coordination with persons engaged in facilitating transactions in securities because it clearly identifies that LMM quoting obligations apply to all of the LMM's appointed classes collectively, and thereby promotes compliance with the proposed rules. Furthermore, the proposed rule text protects investors and the public interest by giving notice to potential LMMs that quoting obligations must be met on a daily basis and that disciplinary action may be taken against an LMM for failing to meet their obligations on each trading day. Specifically, any violation of the proposed heightened quoting standard for LMMs will be subject to potential discipline under Rule Series 12000. As such, the Exchange believes the proposed LMM Compliance rule detailed in Rule 8055(d) is reasonable and appropriate as it is substantially similar to a rule currently in place on another options exchange.[50]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is pro-competitive because it will enable the Exchange to better compete with other options exchanges that provide similar execution algorithms and participation entitlements. The Exchange does not believe the proposed changes will cause any unnecessary burden on intra-market competition because all Exchange Participants may utilize the Pro Rata execution algorithm and priority overlays if the Pro Rata execution algorithm is designated to the applicable options class by the Exchange pursuant to proposed Rule 7135(a). Further, the Exchange does not believe the proposed changes will cause any unnecessary burden on intermarket competition as the proposed rules will allow BOX to compete with other options exchanges in the industry. The proposed rules discussed herein will allow BOX to offer competing functionality on the Exchange that could be attractive to market participants, thus enabling market participants to submit order flow to an additional venue to execute trades. The Exchange does not believe the proposal to establish Lead Market Makers will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes several competitors currently host this participant type on their exchange.[51] In addition, LMMs will be subject to quoting obligations which are similar to those of at least one other options exchange.[52] Further, Exchange believes that because this proposal establishes substantially similar quoting compliance standards that are already in place on other options exchanges, the proposal will not diminish market making activity on the Exchange and thereby may enhance intermarket competition. Moreover, the Exchange believes that the proposal will not burden intra-market competition because the LMM program on BOX is completely voluntary, and any Market Makers that choose to participate are subject to the same obligations under this proposal. All Market Makers that desire to become LMMs will be subject to the same review and scrutiny with respect to their LMM application and the ultimate assignment of options series. The Exchange believes that the proposed rule change will promote competition among Market Makers who desire to be assigned in options series and in turn promote trading activity on the Exchange to the benefit of the Exchange, its Participants, and market participants. The Exchange does not believe the proposed change will cause any unnecessary burden on inter-market competition because any qualifying LMM will be entitled to receive participation entitlements on options series they are obligated to meet higher quoting standards for under the proposed Rules.

[46] *See supra* note 23.

[47] *See supra* note 29.

[48] *See supra* notes 31 and 32.

[49] *See supra* notes 35 and 37.

[50] *See* supra note 38.

[51] *See* NYSEArca Rule 6.82–O. (Lead Market Makers) and NASDAQ BX Options 2, Section 3.

[52] *See supra* notes 35 and 37.

Lastly, as discussed herein, the proposed rule changes are substantially similar to rules currently in place at other options exchanges in the industry. As such, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[53] and Rule 19b–4(f)(6) thereunder.[54]

A proposed rule change filed under Rule 19b–4(f)(6)[55] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[56] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that such waiver would allow BOX to immediately offer the proposed functionality to BOX Participants, which will allow for greater customization resulting in enhanced service to BOX Participants. The Exchange further states that similar execution algorithms and priority overlays are currently available to market participants at other options exchanges. For these reasons, and because the proposal does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[57]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2021–11 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–BOX–2021–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2021–11 and should be submitted on or before June 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10579 Filed 5–19–21; 8:45 am]

BILLING CODE 8011–01–P

[53] 15 U.S.C. 78s(b)(3)(A).

[54] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[55] 17 CFR 240.19b–4(f)(6).

[56] 17 CFR 240.19b–4(f)(6)(iii).

[57] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[58] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for a meeting of the Advisory Committee on Veterans Business Affairs (ACVBA).

DATES: Thursday, June 3, 2021, from 9:00 a.m. to 4:00 p.m. EDT.

ADDRESSES: Due to the coronavirus pandemic, the meeting will be held via Microsoft Teams using a call-in number listed below.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line—''RSVP for 6/3/2021 ACVBA Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line—''Response for 6/3/2021 ACVBA Public Meeting'' no later than May 26, 2021 or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advanced will be addressed

as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period.

To join the ACVBA—June 3, 2021 | 9:00 a.m.–4:00 p.m. ET Participants may join the ACVBA meeting via computer *http://bit.ly/ACVBAJune* or phone. Call in (audio only): Dial In: 202–765–1264: Phone Conference ID: 804504248#.

Special accommodation requests should be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* All applicable documents will be posted on the ACVBA website prior to the meeting: *https://www.sba.gov/page/advisory-committee-veterans-business-affairs.* For more information on veteran owned small business programs, please visit *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The ACVBA is established pursuant to 15 U.S.C. 657(b) note and serves as an independent source of advice and policy. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the ACVBA's objectives for fiscal year 2021.

Dated: May 14, 2021.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2021–10650 Filed 5–19–21; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16981 and #16982; West Virginia Disaster Number WV–00054]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of West Virginia

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4603–DR), dated 05/13/2021.

Incident: Severe Winter Storms.

Incident Period: 02/10/2021 through 02/16/2021.

DATES: Issued on 05/13/2021.

Physical Loan Application Deadline Date: 07/12/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 02/14/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/13/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cabell, Lincoln, Mason, Putnam, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16981 7 and for economic injury is 16982 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–10643 Filed 5–19–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16983 and #16984; HAWAII Disaster Number HI–00063]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Hawaii

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–4604–DR), dated 05/13/2021.

Incident: Severe Storms, Flooding, and Landslides.

Incident Period: 03/08/2021 through 03/18/2021.

DATES: Issued on 05/13/2021.

Physical Loan Application Deadline Date: 07/12/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 02/14/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/13/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Maui.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16983 6 and for economic injury is 16984 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–10642 Filed 5–19–21; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36514]

Canadian National Railway Company. Grand Trunk Corporation, and CN'S Rail Operating Subsidiaries—Control—Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2 in Docket No. FD 36514; notice of receipt of prefiling notification.

SUMMARY: Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and their rail operating subsidiaries (collectively with CNR and GTC, CN or Applicants) have notified the Surface Transportation Board (Board) of their intent to file an application seeking authority for the acquisition of control by CNR, through its wholly owned subsidiary Brooklyn Merger Sub, Inc. (Brooklyn Merger Sub), of Kansas City Southern, and through it, of The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS), in the event that Kansas City Southern accepts an acquisition proposal that CN conveyed to Kansas City Southern's Board of Directors on April 20, 2021 (CN Proposal). Applicants have indicated that 2019 will be the base year for their impact analysis and that they anticipate filing their application on approximately August 20, 2021.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board's website. In addition, one copy of each filing must be sent (and may be sent by email only, if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CN's representative, Raymond A. Atkins, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005; (4) KCS's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW, Suite 300, Washington, DC 20037; (5) any other person designated as a Party of Record on the service list; and, as noted below, (6) the administrative law judge assigned in this proceeding.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0283. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under the terms of the CN Proposal, CNR,[1] through its subsidiary Brooklyn Merger Sub, would acquire all of the capital stock of Kansas City Southern. (Notice of Intent 4.) Specifically, upon receipt of approval by the shareholders of Kansas City Southern [2] and the satisfaction of other customary closing conditions, Brooklyn Merger Sub would merge with and into Kansas City Southern (the Merger), with Kansas City Southern surviving the Merger. (*Id.*) Upon completion of the Merger, holders of Kansas City Southern's common stock would become entitled to receive a combination of CNR common shares and cash in exchange for their common stock, and holders of Kansas City Southern's preferred stock would become entitled to receive cash in exchange for their preferred shares. (*Id.* at 4–5.) Immediately following completion of the Merger, CNR's voting interest in Kansas City Southern acquired in the Merger would be placed into an independent voting trust pending review and approval of the control transaction by the Board.[3] (Notice of Intent 5.) Applicants state that, should the Board take final and favorable action on the application, which would be filed pursuant to 49 U.S.C. 11323–11325, only then would the voting trust be terminated and CNR assume control of Kansas City Southern and its railroad affiliates. (Notice of Intent 5.)

Applicants indicate that they will use 2019 as the base year for the impact analysis in the application and that they anticipate filing their application on approximately August 20, 2021. (*Id.* at 1.)

Major Transaction Status. The Board finds that this is a major transaction under 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. CNR presently controls GTC, a Class I rail carrier, and proposes to acquire common control of KCSR, also a Class I railroad.

Protective Order. By motion filed April 20, 2021, Applicants requested a protective order to protect confidential, highly confidential, and proprietary information to be submitted in connection with the control application. By decision served April 28, 2021, Applicants' motion for a protective order was granted.

Proposed Procedural Schedule. Also on April 20, 2021, Applicants filed a petition to establish a procedural schedule. The Board will solicit comments on the proposed procedural schedule in a separate decision.

Administrative Law Judge. The Board has signed a Memorandum of Understanding with the Federal Mine Safety and Health Review Commission to employ the services of administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge Thomas McCarthy to entertain and rule upon discovery matters and to resolve initially all disputes concerning discovery in this proceeding. Parties are directed to send copies of all their filings and documents in this proceeding to Judge McCarthy, at 1331 Pennsylvania Avenue NW, Washington, DC 20004–1710, and at *ctolbert@fmshrc.gov* and *zbyers@fmshrc.gov*.

It is ordered:

1. This proceeding is assigned to Administrative Law Judge Thomas McCarthy for the handling of all discovery matters and initial resolution of all discovery disputes.

2. In addition to filing pleadings with the Board and serving copies on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, and other parties of record, parties must send a copy of all filings and documents to Judge McCarthy at 1331 Pennsylvania Avenue NW, Washington, DC 20004–

[1] CN's rail operating subsidiaries in the United States include Illinois Central Railroad Company, Wisconsin Central Ltd.; Grand Trunk Western Railroad Company; Bessemer and Lake Erie Railroad Company; Chicago, Central & Pacific Railroad Company; Cedar River Railroad Company; The Pittsburgh & Conneaut Dock Company; Sault. Ste Marie Bridge Company; Waterloo Railway Company; and Wisconsin Chicago Link Ltd. CN's rail operating subsidiaries in Canada include Algoma Central Railway, Inc., Quebec and Lake Saint John Railway Company, Canadian Northern Quebec Railway Company, Canada Southern Railway Company, and BC Rail Partnership.

[2] On May 13, 2021, KCS announced that its board of directors determined that CN's Proposal constituted a ''Company Superior Proposal'' as defined in KCS's merger agreement with Canadian Pacific Railway Limited. For further details, *see* Press Release, KCS, KCS Receives Revised Proposal from CN That Bd. of Directors Determines is a ''Company Superior Proposal'' (May 13, 2021), *https://www.kcsouthern.com/media/news/news-releases/kansas-city-southern-receives-revised-proposal-from-canadian-national-railway-that-board-of-directors-determines-is-a-company-superior-proposal.*

[3] On April 26, 2021, Applicants submitted a motion for Board approval of a voting trust agreement, pursuant to 49 CFR 1180.4(b)(4)(iv). The Board addresses Applicants' motion in a separate decision.

1710, and at *ctolbert@fmshrc.gov* and *zbyers@fmshrc.gov.*

3. Judge McCarthy will be added to the service list in this proceeding and a copy of this decision will be served upon him.

4. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street NW, Suite 2469, Washington, DC 20415–9400 and electronically at *karyn.lusby@opm.gov.* Judge McCarthy shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

5. This decision is effective on its service date.

Decided: May 14, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–10668 Filed 5–19–21; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0017]

Pipeline Safety: Request for Special Permit; Colorado Interstate Gas Company, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Colorado Interstate Gas Company, LLC (CIG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by June 21, 2021.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from the CIG, a subsidiary of Kinder Morgan, Inc., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d), Change in class location and Confirmation or revision of maximum allowable operating pressure; and 49 CFR 192.619(a), Maximum allowable operating pressure: Steel or plastic pipelines.

This special permit is being requested in lieu of pipe replacement or pressure reduction for one (1) pipeline segment totaling 552 feet (approximately 0.105 miles) of 22-inch diameter pipe on the 0005–A Denver-Rock Springs Mainline Pipeline located in Adams County, Colorado. The proposed special permit will allow operation of the original Class 1 pipe in the Class 3 location.

The proposed special permit segment on the CIG 0005–A Denver-Rock Springs Mainline Pipeline has a maximum allowable operating pressure of 822 pounds per square inch gauge and was constructed in 1956.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the CIG 0005–A Denver-Rock Springs Mainline Pipeline are available for review and public comments in Docket No. PHMSA–2021–0017. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, April, 2021, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–10669 Filed 5–19–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Subscription for Purchase and Issue of U.S. Treasury Securities—State and Local Government Series

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Subscription for Purchase and Issue of U.S. Treasury Securities—State and Local Government Series.

DATES: Written comments should be received on or before July 19, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Subscription for Purchase and Issue of U.S. Treasury Securities—State and Local Government Series.

OMB Number: 1530–0065.

Form Number: FS Form 4144—Subscription for Purchase and Issuing of U.S. Securities State and Local Government Series Time Deposits.

FS Form 4144–1—Account Information for U.S. Treasury Securities State and Local Government Series Time Deposits.

FS Form 4144–2—Schedule of U.S. Treasury Securities State and Local Government Series Time Deposits.

FS Form 4144–5—Application for internet Access—U.S. Treasury Securities State and Local Government Series.

FS Form 4144–6—SLGSafe User Acknowledgement.

FS Form 4144–7—SLGSafe Template Worksheet.

Abstract: The information is requested to establish and maintain accounts for the owners of securities of the State and Local Government Series.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: State and Local Government.

Estimated Number of Respondents: 6,437.

Estimated Time per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 2,578.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 14, 2021.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2021–10578 Filed 5–19–21; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On April 21, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. HLAING, Ko Ko (a.k.a. HLAING, U Ko Ko), 3, IPRD Wing, East Shwegonedine Road, Bahan, Burma; DOB 24 Oct 1956; POB Myinmu, Burma; nationality Burma; citizen Burma; Gender Male; Passport OM003624 (Burma) issued 06 Sep 2011 expires 05 Sep 2016; National ID No. 8MAKANANG014283 (Burma); Minister for International Cooperation (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of Executive Order 14014 of February 10, 2021, ''Blocking Property With Respect to the Situation in Burma'' (''the Order'') for being a leader or official of the Government of Burma on or after February 2, 2021.

2. HTET, Hein (a.k.a. HTET, Ivan; a.k.a. HTET, U Hein), Burma; DOB 06 Nov 1987; nationality Burma; Gender Male; National ID No. 12DAGANAN029901 (Burma) (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(v) of the Order for being a spouse or adult child of any person whose property and interests in property are blocked pursuant to this order.

3. HTET, Kaung (a.k.a. HTET, U Kaung), Burma; DOB 03 Aug 1992; nationality Burma; Gender Male; National ID No. 12DAGANAN032517 (Burma) (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(v) of the Order for being a spouse or adult child of any person whose property and interests in property are blocked pursuant to this order.

4. MAUNG, Mahn Nyein (a.k.a. MAUNG, Padoh Mahn Nyein; a.k.a. MAUNG, Phado Man Nyein), Naypyitaw, Burma; DOB 01 Jan 1947 to 01 Jan 1949; nationality Burma; Gender Male; State Administrative Council Member (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

5. MYINT, Tun Aung (a.k.a. MYINT, Htun Aung; a.k.a. MYINT, Saw Htun Aung; a.k.a. MYINT, Saw Tun Aung), Number (632), Gagyi/16, Arzarni Road, Number (4) Lanmason, Quarter (5), Shwepyithar Township, Rangoon, Burma; DOB 16 Feb 1942; alt. DOB 19 Feb 1942; citizen Burma; Gender Male; Union Minister of Ethnic Affairs (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

6. NAUNG, Tun Tun (a.k.a. NAING, Tun Tun; a.k.a. NAUNG, Htun Htun), Burma; DOB 30 Apr 1963; nationality Burma; citizen Burma; Gender Male; Union Minister of Border Affairs (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

7. NYEIN, Than (a.k.a. NYEIN, U Than), No 67, Yin Mar Myaing St, Su Paung, Thuwunna, Theingangyun Tsp, Rangoon, Burma; DOB 29 Feb 1952; POB Kawkareik, Burma; nationality Burma; citizen Burma; Gender Male; Passport MA370433 (Burma) issued 08 Nov 2013 expires 07 Nov 2018; National ID No. 12YAKANAN007001 (Burma) (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

8. NYUNT, Thein (a.k.a. NYUNT, U Thein), Naypyitaw, Burma; DOB 26 Dec 1944; alt. DOB 20 Nov 1944; POB Kawkareik, Burma; nationality Burma; citizen Burma; Gender Male; National ID No. 12THAGAKAN012432 (Burma); State Administrative Council Member (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

9. SAING, Sai Lone (a.k.a. HSAI, U Sai Lone; a.k.a. HSAING, U Sai Lone; a.k.a. HSENG, Sai Lone; a.k.a. HSENG, Sai Long; a.k.a. SAING, U Sai Lone), Naypyitaw, Burma; DOB 18 Apr 1947; nationality Burma; Gender Male; State Administrative Council Member (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

10. SAN, Pwint (a.k.a. HSAN, Pwint), Zayar Shwe Pyi Road, Naypyitaw, Burma; DOB 13 Jul 1961; POB Rangoon, Burma; nationality Burma; citizen Burma; Gender Male; Passport DM000334 (Burma) issued 30 May 2011 expires 29 May 2021; National ID No. 12MARAKAN007186 (Burma); Union Minister of Commerce (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

11. SOE, Thein (a.k.a. SOE, U Thein), Burma; DOB 23 Jan 1952; POB Kani, Burma; nationality Burma; citizen Burma; Gender Male; Union Election Commission Chairman (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

12. SHEIN, Win (a.k.a. SHEIN, U Win), Myananyadanar, Naypyitaw, Burma; DOB 31 Jul 1957; POB Mandalay, Burma; nationality Burma; citizen Burma; Gender Male; Passport DM001478 (Burma) issued 10 Sep 2012 expires 09 Sep 2022; National ID No. 12DAGANA011336 (Burma); Minister for Planning, Finance, and Industry (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

13. SWE, Khin Maung (a.k.a. SWE, Khin Mg; a.k.a. SWE, U Khin Maung), Naypyitaw, Burma; DOB 20 Jul 1942; nationality Burma; citizen Burma; Gender Male; State Administrative Council Member (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

14. THU, Yin Min (a.k.a. THU, Daw Yin Min), Burma; DOB 23 Aug 1989; nationality Burma; Gender Female; National ID No. 12AHLANAN042764 (Burma) (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(v) of the Order for being a spouse or adult child of any person whose property and interests in property are blocked pursuant to this order.

15. WIN, Thet Khaing (a.k.a. WIN, Thet Kaing), C 541, 1, Yan Myo Thant Zin Street, Zaya Theikdi Quarter, Naypyitaw, Burma; DOB 14 Nov 1961; POB Rangoon, Burma; nationality Burma; Gender Male; Passport DM004668 (Burma) issued 17 Oct 2017 expires 16 Oct 2027; National ID No. 12KAMATAN043299 (Burma); Minister of Health and Sports (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

16. YI, Khin Maung (a.k.a. YEE, Khin Maung; a.k.a. YEE, Khin Mg; a.k.a. YEE, U Khin Maung; a.k.a. YI, Khin Mg; a.k.a. YI, U Khin Maung), No. 3132, Khatta (18) Street, Ottayathiri Township, Naypyitaw, Burma; DOB 15 Feb 1965; POB Rangoon, Burma; nationality Burma; citizen Burma; Gender Male; Passport DM000956 (Burma) issued 25 Jan 2012 expires 24 Jan 2022; National ID No. 14HATHATAN059290 (Burma); alt. National ID No. 13MAYATANAING002216; Minister for Natural Resources and Environmental Conservation (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(b) of the Order for being a leader or official of the Government of Burma on or after February 2, 2021.

Entity

1. STATE ADMINISTRATIVE COUNCIL (a.k.a. STATE ADMINISTRATION COUNCIL), Naypyitaw, Burma; Target Type Government Entity [BURMA–EO14014].

Designated pursuant to section 1(a)(iv) of the Order for being a political subdivision, agency, or instrumentality of the Government of Burma.

Dated: May 17, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–10619 Filed 5–19–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0858]

Agency Information Collection Activity Under OMB Review: Authorization and Consent To Release Information to the Department of Veterans Affairs (VA), and General Release for Medical Provider Information to the Department of Veterans Affairs (VA)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0858''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0858'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5101(a)(1).

Title: Authorization and Consent to Release Information to the Department of Veterans Affairs (VA) (VA Form 21–4142), and General Release for Medical Provider Information to the Department of Veterans Affairs (VA) (VA Form 21–4142a).

OMB Control Number: 2900–0858.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–4142 is used to authorize the disclosure of information to the VA and VA Form 21–4142a is used to gather the necessary information to request medical provider information to the VA. Without the information solicited by these forms, VA would be unable to determine eligibility, and benefits would not be properly paid.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 50 on March 17, 2021, page 14687.

Affected Public: Individuals or Households.

Estimated Annual Burden: 10,616.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 127,397.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–10638 Filed 5–19–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Reestablishment

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Veterans Affairs intends to reestablish the National Research Advisory Council for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW, Washington, DC 20420; telephone (202) 266–4660; or email at *Jeffrey.Moragne@va.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Veterans Affairs intends to reestablish the National Research Advisory Council for 2 years from the filing date of the charter's reestablishment. The Committee advises the Secretary of Veterans Affairs and the Under Secretary for Health (USH) and makes recommendations on the nature and scope of research and development sponsored and/or conducted by the Veterans Health Administration (VHA) to include: (1) The policies and projects of the Office of Research and Development (ORD); (2) the focus of research on the high priority health care needs of Veterans; (3) the balance of basic, applied, and outcomes research; (4) the scientific merit review process; (5) the appropriate mechanisms by which ORD can leverage its resources to enhance the research financial base; (6) the rapid response to changing health care needs, while maintaining the stability of the research infrastructure; and (7) the protection of human subjects of research.

Dated: May 17, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–10648 Filed 5–19–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0666]

Agency Information Collection Activity Under OMB Review: Information Regarding Apportionment of Beneficiary's Award

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0666.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0666'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5307.

Title: Information Regarding Apportionment of Beneficiary's Award (VA Form 21–0788).

OMB Control Number: 2900–0666.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–0788 is used to collect the information that is necessary to determine whether an apportionment may be authorized and the reasonable amount that may be awarded. Without this collection of information, VA would be unable to properly authorize apportionments of compensation and pension benefits.

No substantive changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past two years.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 50 on March 17, 2021, pages 14686 and 14687.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,606.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,211.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–10644 Filed 5–19–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a virtual meeting of the Advisory Committee on Cemeteries and Memorials will be held on June 16, 2021—June 17, 2021. The meeting sessions will begin and ends as follows:

Date	Time
Wednesday, June 16, 2021.	11:00 a.m. to 3:00 p.m. EST.
Thursday, June 17, 2021.	11:00 a.m. to 3:00 p.m. EST.

The meeting sessions are open to the public. If you are interested in attending the meeting virtually, the dial-in number for both days is 1–404–397–1596, Access Code: 1992672306#.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding such activities.

On Wednesday, June 16, 2021, the agenda will include remarks by VA Leadership; refresher on Advisory Committee Ethics; best practice tips on the Federal Advisory Committee Act; status update on Tribal/National Cemetery Mentorship Program; burial needs of Native Americans and Alaskan Veterans/emerging trends and cultural awareness; burial needs of the hardest five percent; and public comments.

On Thursday, June 17, 2021, the agenda will include a remarks and recap from committee chair; discussion on the bill for reservist/guardsman; New Charge: HR 7105 Urn/Commemorative Plaque Benefit; update on burial social trends; discussion on outreach and memorialization efforts; recap of charges and action items; public comments; and open discussion.

Any member of the public wishing to attend the meeting should contact Ms. Christine Hamilton, Designated Federal Officer at *christine.hamilton1@va.gov* or 202–461–5681. Written comments may also be submitted to the committee. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: May 17, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–10682 Filed 5–19–21; 8:45 am]

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