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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 3550 and 3555

[Docket No. RHS–22–SFH–0023]

Single Family Housing Section 502 Direct and Guaranteed Manufactured Housing Pilots

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing this notice to waive two regulatory requirements for the Section 502 Direct and Guaranteed Manufactured Housing pilot program. The Agency's intention is to evaluate the existing regulations and remove regulatory barriers to assist eligible applicants with improved ease of use for very low- to moderate-income homeowners seeking to purchase affordable housing. The pilot also supports the current Administration's Housing Supply Action Plan which seeks to boost new financing mechanisms to build and supply quality affordable housing units. This notice briefly discusses the continuation of the existing waivers and provides contact information for additional details about the pilot program.

DATES: The effective date of the two regulatory waivers is November 2, 2022. The duration of the pilot program is anticipated to continue until November 4, 2024, at which time the RHS may extend the pilot program (with or without modifications) or terminate it depending on the workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. RHS will notify the public whether the pilot program has been extended or terminated.

FOR FURTHER INFORMATION CONTACT: Stephanie Freeman, Finance and Loan Analyst, Policy, Analysis, and Communications Branch, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Email: *stephanie.freeman@usda.gov;* Phone: (314) 457–6413 and Jeremy Anderson, Finance and Loan Analyst, Single Family Housing Direct Loan Division, Rural Development, U.S. Department of Agriculture, Email: *jeremy.anderson@usda.gov;* Phone: (202) 690–3971.

SUPPLEMENTARY INFORMATION:

Background

The RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs. The Agency offers loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance loans and grants by partnering with agricultural producers, cooperatives, Indian tribes, non-profits, and other local, state, and federal agencies.

Affordable housing is essential to the vitality of communities in rural America. RD's Single Family Housing Programs give families and individuals the opportunity to purchase, build, repair their existing home, or to refinance their current mortgage under certain criteria. Eligibility for these loans, loan guarantees, or grants is based on income which varies according to the average median income for each eligible rural area.

The Section 502 Direct Loan Program under 7 CFR 3550 assists very low- and low-income applicants obtain decent, safe and sanitary housing in eligible rural areas by providing payment assistance to increase an applicant's repayment ability. The payment assistance is a type of subsidy that reduces the mortgage payment for a short time and is determined by the adjusted family income. There are a number of different factors that determine the applicant's eligibility for this program but at minimum the applicant, as determined in accordance with 7 CFR 3550.53 and 42 U.S.C. 1471, must have an adjusted income that is at or below the applicable low-income limit for the area where they wish to purchase a home and they must demonstrate a willingness and have the ability to repay debt.

The Section 502 Guaranteed Loan Program, under 7 CFR 3555, provides a 90% loan note guarantee to approved lenders in efforts to provide low- and moderate-income households the opportunity to own adequate, modest, decent, safe and sanitary dwellings as their primary residence in eligible rural areas. Eligible applicants may purchase, build, rehabilitate, improve or relocate a dwelling in an eligible rural area. Applicant eligibility for this program is determined by the lender pursuant to the criteria set forth in 7 CFR 3555, Subpart D.

RHS may authorize limited demonstration programs to test new approaches to offering housing under the statutory authority granted to the Secretary, as set forth in 42 U.S.C. 1476(b), 7 CFR 3550.7 and 7 CFR 3555.2(b). Demonstration programs are time- and scope-limited programs designed to test new approaches and for those reasons, demonstration programs need not be consistent with all regulatory provisions while active.

In 2021, the Agency extended the existing Section 502 Manufactured Housing Pilot program in order to continue assessing the pilots' impact. The first pilot involves financing existing manufactured homes; the second pilot involves the ownership requirement for new energy-efficient manufactured and modular homes in land-lease communities operating on a nonprofit basis. These allowances remain unchanged from any previous extensions of this pilot program. As pilot programs, the number of participating states remain restricted while providing for adequate regional representation.

Continuation of the Existing Manufactured Home Pilot

The Agency is continuing with the existing manufactured housing pilot, which was initially implemented on August 12, 2016, in which RD waived the regulatory restrictions cited in 7 CFR 3550 and 3555 and will finance existing manufactured homes in the pilot states even if the home is not currently financed by RD. Under current regulations, new manufactured homes are eligible for financing through the Section 502 Single Family Housing (SFH) Direct and Guaranteed Loan Programs. Existing manufactured homes

are not eligible unless the home is already financed through RD (7 CFR 3550.52(e)(1); 3550.73(b); 3555.208(b)(3)).

Eligibility Requirements

Approved lenders in the SFH Guaranteed Loan Program do not require additional approval to participate provided the home is in a pilot state. The loan request must be from an eligible applicant, all the pilot conditions listed in this section must be met, and all other program requirements that have not been waived must be met. The following States are included in this pilot: Colorado, Iowa, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The following unit requirements below must be met:

The unit must have been constructed on or after January 1, 2006, in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), as evidenced by an affixed Housing and Urban Development (HUD) Certification Label and the unit must not have been previously installed on a different homesite, or had any structural alterations to it since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials.

The unit inspection is required using one of two methods: Option (1) Form HUD–309, ''HUD Manufactured Home Installation Certification and Verification Report'' completed in accordance with 24 CFR 3286.511 by a qualified party as follows: A manufactured home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided that the jurisdiction has a residential code enforcement program; a professional engineer, registered architect, a HUD-accepted Production Inspection Primary Inspection Agency (IPIA) or a Design Approval Primary Inspection Agency (DAPIA), or an International Code Council (ICC) certified inspector. Option (2) Obtain a certification that the foundation design meets the requirements of either HUD Handbook 4930.3G or HUD Publication 7584, which updated and revised the pre-1996 version of HUD Handbook 4930.3G, ''Permanent Foundations Guide for Manufactured Housing (PFGMH).'' Certifications referencing either Publication 7584 or Handbook 4930.3G are acceptable. The foundation certification must be from a licensed professional engineer, or registered architect, who is licensed/registered in the state where the manufactured home is located and must attest to compliance with current guidelines of the PFGMH. The certification must be site specific and contain the engineer's or registered architect's signature, seal and/or state license/certification number. This certification can take the place of Form HUD–309.

Guaranteed loan applications submitted under this pilot must be manually submitted and underwritten, however the documents may be submitted through the Guaranteed Underwriting System (GUS). A job aid for this type of submission is available in our USDA LINC Training and Resource Library in the ''Loan Origination'' tab or directly here: *https://www.rd.usda.gov/sites/default/files/linc_manual_submission_job_aid.pdf* . Agency staff will need to select ''MANUFACTURED (PILOT)'' for ''Construction Type'' in the Property Information section in the Guaranteed Loan System (GLS). This will allow for the proper identification of pilot loans for tracking and monitoring purposes.

Direct loan applications submitted under the pilot are submitted directly to the local RD office. Agency staff will need to select Program Type Code 1014 (very low income) or 1015 (low income) unless the property is located in a persistent poverty county, in which case Program Type Code 1114 (very low income) or 1115 (low income) will be used. In addition, Agency staff will need to select a Construction Type of ''Manuf/Home'' and a Dwelling Type of ''Purchase Old, Refinance, Purchase Old/Repair, or Refinance/Repair'' in UniFi. This will allow for the proper identification of pilot loans for tracking and monitoring purposes.

The applicant and property must meet all other criteria set forth in applicable statutes, 7 CFR part 3550 and HB–1–3550 for Direct loans or 7 CFR part 3555 and HB–1–3555 for Guaranteed loans, as applicable. These criteria include, but are not limited to, the following: The unit must have a floor area of not less than 400 square feet; the unit must meet the Comfort Heating and Cooling Certificate Uo (Coefficient of heat transmission) Value Zone for the location; the towing hitch and running gear must have been removed; the manufactured home must be classified and taxed as real estate; the remaining economic life of the property must meet or exceed the 30 year term of the proposed loan; and the unit replacement cost coverage must be equal to the insured value of the improvements or the unpaid principal balance with deductible(s) of up to but not exceeding the greater of $1,000 or one percent (1%) of the policy.

Continuation of the Ownership Requirement Pilot for Energy Efficient Manufactured and Modular Home Financing in Land-Lease Communities Operating on a Nonprofit Basis

The Agency is continuing with the existing pilot that involves the ownership requirement for new energy-efficient manufactured and modular homes in land-lease communities operating on a nonprofit basis. According to 7 CFR 3550.58(b), a leasehold interest must have an unexpired term that is at least 150 percent of the term of the mortgage for Direct loans. According to 7 CFR 3555.203(b)(3), a leasehold interest must have an unexpired term of at least 45 years from the date of loan closing for a Guaranteed loan.

Eligibility Requirements

Under this pilot, RD will accept a lease with an unexpired term that is at least two years beyond the term of the promissory note in the pilot states. The following States are included in this pilot: California, Michigan, Minnesota, New Hampshire, Oregon, Pennsylvania, Vermont, and Wisconsin. The loan request must be from an eligible applicant, all the pilot conditions must be met, and new manufactured and modular homes must meet the following pilot conditions:

At a minimum, new manufactured and modular homes must be Energy Star compliant and the unexpired term of the lease must be at least two years longer than the mortgage term. While the lease terms in 7 CFR 3550.58(b) and 3555.203(b)(3) could be seen as providing borrowers additional protection, many states have statutes that promulgate fair lease terms and afford protections to residents of land-lease communities.

For the SFH Guaranteed Loan Program, pilot states should consider following the recommendations in HUD's interim guidance related to 24 CFR 3285.312 on the use of frost-free foundations or frost protected shallow foundations.

For the SFH Direct Loan Program, pilot states may use the recommendations from HUD's interim guidance on frost-free or frost-protected shallow foundations in lieu of RD Instruction 1924–A, Exhibit J. Under the HUD interim guidance recommendations, the installer should install all footings and piers below the

frost line depth, or for Frost Free Foundations, have a site investigation performed by a soil engineer or geotechnical engineer to verify if the soil condition at each home site is of a non-frost susceptible classification and is well drained. In lieu of a site soil investigation, a layer of washed gravel, or crushed stone, or course or dense sand may be provided to the frost line depth.

For either of these alternatives, subsurface drains need to be provided; or use a Frost Protected Shallow Foundation system that utilizes below ground insulation to protect the soil from freezing with subsurface drains provided at each site. The applicant and property must meet all other criteria set forth in applicable statutes, 7 CFR part 3550 and HB–1- 3550 for Direct loans or 7 CFR part 3555 and HB–1–3555 for Guaranteed loans, as applicable. Program Directors should use the tracking tool under the ''Energy Efficient Housing'' link on the SFH SharePoint tracking site to report loans made under this pilot.

Paperwork Reduction Act

The regulatory waivers for this pilot contains no new reporting or recordkeeping burdens under OMB control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ascr.usda.gov/complaint_filing_cust.html,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, Washington, DC 20250–9410; or (2) Fax: (833) 256–1665 or (202) 690–7442; or (3) Email: *Program.Intake@usda.gov.*

Authority: Title V, Section 502 of the Housing Act of 1949, as amended; 42 U.S.C. 1472.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–23754 Filed 11–1–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1307; Project Identifier MCAI–2022–01331–R; Amendment 39–22218; AD 2022–22–03]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Leonardo S.p.a. Model AB139 and AW139 helicopters. This AD was prompted by a report of smoke and fire in the cockpit. This AD requires inspecting the forward cabin roof ceiling harnesses and installation, 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 November 17, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 17, 2022.

The FAA must receive comments on this AD by December 19, 2022.

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

- *Federal eRulemaking Portal:* Go to *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.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1307; 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 street address for Docket Operations is listed above.

Material Incorporated by Reference

- For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this IBR material on the EASA website at *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 at *regulations.gov* by searching for and locating Docket No. FAA–2022–1307.

Other Related Service Information: For Leonardo Helicopters service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* This service information is also available at the contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Acting Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2022–0209–E, dated October 12, 2022 (EASA AD 2022–0209–E), to correct an unsafe condition for certain serial-numbered Leonardo S.p.A. Helicopters, formerly Finmeccanica S.p.A, AgustaWestland S.p.A., Agusta S.p.A.; and AgustaWestland Philadelphia Corporation, formerly Agusta Aerospace Corporation, Model AB139 and AW139 helicopters.

This AD was prompted by a report of smoke and fire in the cockpit and subsequent reduced control of the helicopter. The FAA is issuing this AD to address improper installation of the forward cabin roof ceiling harnesses, which could result in damage of the electrical wiring, fire in the forward cabin roof ceiling, and possible loss of control of the helicopter. See EASA AD 2022–0209–E for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0209–E requires a one-time borescope inspection of the cable installation, and a one-time visual inspection for damage of the cables and the diode in the forward cabin roof ceiling. Depending on the results, EASA AD 2022–0209–E requires an additional inspection, contacting Leonardo for approved corrective action(s) instructions and accomplishing those instructions accordingly, restoring the correct installation of the cables, or restoring the required clearance.

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.

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Emergency Alert Service Bulletin No. 139–731, dated October 11, 2022. This service information specifies procedures for borescope inspecting the forward cabin roof ceiling harnesses installation in the area between STA 3120 and 3400, and depending on the results, inspecting the harnesses for chafing and damage, inspecting the torque tube C3 for damage, adjusting the strip installation, and contacting Leonardo for further instruction. This service information also specifies procedures for inspecting the diode A77 harness installation in the area between STA 3400 and 3900 for chafing and damage, ensuring the minimum clearance between the harness and diode A77 and if necessary, re-routing the cable harnesses to meet the minimum clearance, visually inspecting diode A77 for damage, and depending on the results, contacting Leonardo for further instruction.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Italy, EASA, its technical representative, has notified the FAA of the unsafe condition described in its emergency AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0209–E, described previously, as IBRed, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0209–E is IBRed in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2022–0209–E 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 EASA AD 2022–0209–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0209–E. Service information referenced in EASA AD 2022–0209–E for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1307 after this final rule is published.

Differences Between This AD and the EASA AD

EASA AD 2022–0209–E requires contacting Leonardo for approved corrective action(s) instructions, where this AD requires repair done in accordance with a specified method. EASA AD 2022–0209–E specifies reporting certain inspection results within 30 days after completing the inspection, where this AD requires reporting those inspection results within 10 days after completing the inspection.

Interim Action

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

Justification for Immediate Adoption 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 foregoing notice and comment prior to adoption of this rule because damage and chafing of the forward cabin roof ceiling harnesses could lead to smoke and fire in the cockpit and possible reduced flight control during any phase of flight without any previous indications. This unsafe condition was discovered after an initial investigation following a recent occurrence of smoke and fire ignition in the cockpit and reduced control of a Model AW139 helicopter, and this condition may currently exist in other helicopters. Therefore, the initial action required by this AD must be accomplished within 10 hours time-

in-service. This compliance time is shorter than the time necessary for the public to comment and for publication of the final rule. 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 forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1307; Project Identifier MCAI–2022–01331–R'' 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 *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 Kristi Bradley, Acting Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (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 126 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the harness installation, and if required, inspecting for chafing and damage and correcting the installation, takes up to about 2 work-hours for an estimated cost of up to $170 per helicopter and $21,420 for the U.S. fleet. Inspecting the diode harness installation for chafing and damage and ensuring required clearance, and if required, re-routing the harness, takes up to about 10 work-hours for an estimated cost of up to $850 per helicopter and $107,100 for the U.S. fleet. The FAA has no way of knowing the costs to accomplish approved repairs. If required, reporting information takes about 1 work-hour for an estimated cost of $85.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some 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 currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory 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, 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.

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–22–03 Leonardo S.p.a.: Amendment 39–22218; Docket No. FAA–2022–1307; Project Identifier MCAI–2022–01331–R.

(a) Effective Date

This airworthiness directive (AD) is effective November 17, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters serial numbers (S/Ns) 31005 through 31984 inclusive (except S/Ns 31007, 31803, 31959, 31967, 31969, 31974, 31982, and 31983), S/Ns 41001 through 41580 inclusive, and S/Ns 41801 through 41806 inclusive, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2497, Electrical Power System Wiring.

(e) Unsafe Condition

This AD was prompted by a report of smoke and fire in the cockpit and subsequent reduced control of the helicopter. The FAA is issuing this AD to address improper installation of the forward cabin roof ceiling harnesses. The unsafe condition, if not addressed, could result in damage of the electrical wiring, fire in the forward cabin roof ceiling, and possible 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 Union Aviation Safety Agency Emergency AD 2022–0209–E, dated October 12, 2022 (EASA AD 2022–0209–E).

(h) Exceptions to EASA AD 2022–0209–E

(1) Where EASA AD 2022–0209–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0209–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2022–0209–E specifies to contact Product Support Engineering in order to receive further instruction and where EASA AD 2022–0209–E requires contacting Leonardo for approved corrective action(s) instructions, this AD requires repair done in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a. Helicopters EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) Where paragraph (9) of EASA AD 2022–0209–E specifies reporting inspection results to Leonardo within 30 days after completing an inspection that detects any discrepancy, this AD requires reporting those inspection results at the applicable compliance time in paragraph (h)(4)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after completing the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(5) The ''Remarks'' section of EASA AD 2022–0209–E does not apply to this AD.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are 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 Kristi Bradley, Acting Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2022–0209–E, dated October 12, 2022.

(ii) [Reserved]

(3) For EASA Emergency AD 2022–0209–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *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.

(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 *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on October 14, 2022.

Christina Underwood,

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

[FR Doc. 2022–23777 Filed 10–27–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0159; Project Identifier AD–2021–01019–T; Amendment 39–22199; AD 2022–20–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 757 airplanes. This AD was prompted by a report of cracks found in the fastener holes at a certain location in the center wing box rear spar, lower skin. This AD requires repetitive inspections for cracking of certain areas of the center wing box rear spar, lower skin and lower chord; and repair. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 7, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 7, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–0159; 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.

Material Incorporated by Reference

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0159.

FOR FURTHER INFORMATION CONTACT:

Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; email: *peter.jarzomb@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 The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes. The NPRM published in the **Federal Register** on April 11, 2022 (87 FR 21032). The NPRM was prompted by a report of cracks found in the fastener holes at a certain location in the center wing box rear spar, lower skin, on a Boeing Model 737–300. An analysis by Boeing showed the same condition can occur on Boeing Model 757 airplanes. In the NPRM, the FAA proposed to require repetitive inspections for cracking of certain areas of the center wing box rear spar, lower skin and lower chord; and repair. The FAA is issuing this AD to detect and correct cracking that, if undetected, could result in the inability of a principal structural element to sustain limit load, which could adversely affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from FedEx Express who supported the NPRM without change.

The FAA received additional comments from four commenters, including Aviation Partners Boeing (APB), Boeing, Delta Air Lines (Delta), and United Airlines (United). The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

APB stated that accomplishing Supplemental Type Certificate (STC) ST01518SE does not affect accomplishment of the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01518SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Clarify Sealant Requirements

Delta requested adding a paragraph to the proposed AD to provide clarification on the sealant requirements specified in Figure 2, Sheet 3; Figure 3, Sheet 3; and Figure 4, Sheet 3 of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021. Delta stated that in those figures on the sheets specified in the previous sentence the application of BMS 5–45 and BMS 5–168 sealants are listed as separate substeps and calls for both of those sealants to be applied. Delta also stated that Step 2 of Figures 2 and 4 also seem to confirm a ''both/and'' interpretation. Delta asserted that without clarification, operators would be unable to discern between a ''both/and'' sub-step and an ''either/or'' sub-step in those figures. Delta added that Boeing confirmed that ''The intent of the note is for operators to choose one of the sealants.'' Delta pointed out that in other Boeing service information, an ''either/or'' step for applying sealant would use the format ''BMS X–XX (BMS Y–YY optional).'' Delta added in closing that it is impossible for operators to obtain materials meeting BMS 5–168. United also requested a correction to step 3 of figure 4 of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, because that step specifies applying two fuel tank sealants at the same location while a referenced manual section only specifies one sealant to be applied.

The FAA agrees to clarify the sealant requirements. The FAA has added paragraph (h)(3) to this AD to specify that where Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, states in Step 3 of Sheet 3 of Figures 2 and 4 and in Step 4 of Sheet 3 of Figure 3 to use both sealants, this AD only requires one of the sealants to be used.

Request To Permit Certain Substitutes

Delta requested a revision of the proposed AD to permit the use of Section 20–30–01–201 from the Boeing 757 Aircraft Maintenance Manual (AMM) as a means of identifying permitted substitutes for BMS 5–168 and for fasteners, process and material substitutions. Delta stated that it reviewed reference material of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, and found that there were no products identified as a BMS 5–168 sealant.

The FAA disagrees with the request to revise the proposed AD to reference a section of the AMM. As previously stated, the FAA has added paragraph (h)(3) to this AD to permit the use of either BMS 5–45 or BMS 5–168 sealants, which provides relief from the lack of a BMS 5–168-qualified sealant. The FAA still requires the use of approved fasteners, processes, and material substitutions in accordance with the specifications of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021. The FAA has not changed this AD in this regard.

Request To Remove Incorrect Phrasing From Service Information

Delta requested a paragraph be added to the proposed AD to remove the phrase ''as an accepted procedure'' from note (b) in Sheet 3 of Figure 1 of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021. Delta noted that a general note in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, defines ''refer to'' (suggested action) and ''in accordance with'' (required action) and that ''as an accepted procedure'' is being used in a note that specifies ''in accordance with.'' Delta received confirmation from Boeing that the phrase ''as an accepted procedure''

should not have been used in a note that specified ''in accordance with.''

The FAA agrees to add paragraph (h)(4) to this AD to require omitting ''as an accepted procedure'' from note (b) in Sheet 3 of Figure 1 of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021.

Request To Identify Inspection Locations in Costs of Compliance

Boeing requested that the inspection locations identified in the table of the Costs of Compliance paragraph of the proposed AD be revised. Boeing stated that the second row of the table, which identifies ultrasonic and detailed inspection action, does not specify a location. Boeing identified that location as being between LBBL [left body buttock line] 5.5 and 9.5 and RBBL [right body buttock line] 5.5 and 9.5. Boeing also stated that the third row of the table is not correct and should specify ''between LBBL 5.5 and RBBL 5.5.''

The FAA agrees to revise the table in the Cost of Compliance paragraph of this AD as suggested by Boeing.

Request To Revise Estimated Work Hours

Boeing requested the table in Cost of Compliance paragraph in the proposed AD be revised to clarify that internal access hours are included with inspection actions. Boeing suggested either breaking out the internal access hours in a separate row or adding a footnote to clarify that the internal access hours have been included in each inspection action and thus, the overall inspection hours may be less when accomplished concurrently. Boeing noted that the proposal would allow operators to more accurately estimate the costs for their fleets.

The FAA agrees to clarify the estimated costs. The FAA acknowledges that access and close-out actions comprise the bulk of the work-hour estimates for the inspections. Further, for some situations, there might be duplicated access costs included in the estimates and thus the AD might look more ''expensive'' than the actual cost to operators. However, it is FAA policy to include all related work-hours in the cost estimate for required actions. Although an operator may choose to complete multiple inspections at once, they are not required to. Therefore the FAA includes all related costs for each inspection, which includes the access and close-out work-hours. The FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. 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 Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021. This service information specifies procedures for repetitive external high-frequency eddy current (HFEC) or internal detailed inspections for cracking in the center wing box rear spar, lower skin, and lower chord between LBBL 9.5 and 39.0 and RBBL 9.5 and 39.0; repetitive internal ultrasonic inspection of the center wing box lower chord and detailed inspections of the lower skin at the rear spar between LBBL 5.5 and LBBL 9.5, and between RBBL 5.5 and RBBL 9.5 for cracking; repetitive internal detailed inspection of the center wing box lower skin and rear spar lower chord between LBBL 5.5 and RBBL 5.5 for any cracking; and repair. 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 477 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC inspection or detailed inspection (between LBBL 9.5 and 39.0 and RBBL 9.5 and 39.0).	Up to 19 work-hours × $85 per hour = Up to $1,615 per inspection cycle.	$0	$1,615 per inspection cycle ...	Up to $770,355 per inspection cycle.
Ultrasonic and detailed inspection (between LBBL 5.5 and 9.5 and RBBL 5.5 and 9.5).	19 work-hours × $85 per hour = $1,615 per inspection cycle.	0	$1,615 per inspection cycle ...	$770,355 per inspection cycle.
Detailed inspection (between LBBL 5.5 and RBBL 5.5).	18 work-hour × $85 per hour = $1,530 per inspection cycle.	0	$1,530 per inspection cycle ...	$729,810 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–20–15 The Boeing Company: Amendment 39–22199; Docket No. FAA–2022–0159; Project Identifier AD–2021–01019–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 7, 2022.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01518SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of cracks found in the fastener holes at a certain location on the center wing box rear spar, lower skin. The FAA is issuing this AD to detect and correct cracking that, if undetected, could result in the inability of a principal structural element to sustain limit load, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–57A0075, dated August 25, 2021, which is referred to in Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, use the phrase ''the original issue date of Requirements Bulletin 757–57A0075 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) Where Step 3 in Sheet 3 of Figures 2 and 4, and Step 4 in Sheet 3 of Figure 3 of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, specifies applying both BMS 5–45 and BMS 5–168 sealants, this AD requires application of either BMS 5–45 or BMS 5–168 sealant.

(4) Where note (b) in Sheet 3 of Figure 1 of Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021, specifies ''as an accepted procedure,'' this AD requires omitting that phrase.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; email: *peter.jarzomb@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 757–57A0075 RB, dated August 25, 2021.

(ii) [Reserved]

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

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

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

Issued on September 24, 2022.

Christina Underwood,

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

[FR Doc. 2022–23770 Filed 11–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1409; Project Identifier AD–2022–01396–A; Amendment 39–22235; AD 2022–23–08]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Viking Air Limited (Viking) (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes. This AD was prompted by a recent investigation of a Viking Model DHC–3 airplane where the lock ring of the stabilizer actuator was found missing. This AD requires a visual inspection of the stabilizer actuator to confirm that the stabilizer actuator lock ring is present, correctly seated in the groove in the upper housing, and engaged in the clamp nut, applicable corrective actions, and application of a torque seal. This AD also requires sending the inspection results to the FAA. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2022.

The FAA must receive comments on this AD by December 19, 2022.

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

- *Federal eRulemaking Portal:* Go to *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.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1409; 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 street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; email: *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2022, a fatal accident of a Viking Model DHC–3 airplane in Mutiny Bay near Freeland, WA occurred. The National Transportation Safety Board investigation showed that the lock ring of the stabilizer actuator was found missing. The investigation revealed that the clamp nut that attaches the top eye end and bearing assembly of the horizontal stabilizer actuator to the actuator barrel had unscrewed from the barrel. The investigation also found that the circular wire lock ring, which was designed to prevent the clamp nut from unscrewing, was not present. This condition, if not detected and corrected, could result in a reduction or loss of pitch control during flight with consequent loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires a visual inspection of the stabilizer actuator to confirm that the stabilizer actuator lock ring is present, correctly seated in the groove in the upper housing, and engaged in the clamp nut, applicable corrective actions, and application of a torque seal. This AD also requires sending the inspection results to the FAA.

Interim Action

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

Justification for Immediate Adoption 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 foregoing notice and comment prior to adoption of this rule because loss of pitch control during flight with consequent loss of control of the airplane could occur rapidly and without warning due to a missing or incorrectly seated lock ring in the stabilizer actuator. Given the significance of the risk presented by this unsafe condition, it must be immediately addressed. Thus, the FAA has determined that these airplanes must be inspected within 10 hours time-in-service. 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 forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1409 and Project Identifier AD–2022–01396–A'' 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 *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 Elizabeth Dowling, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. 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

The requirements of the Regulatory Flexibility Act (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 FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 63 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Torque Seal Application	1 work-hour × $85 per hour = $85	Not Applicable	$85	$5,355
Reporting Requirement	1 work-hour × $85 per hour = $85	Not Applicable	85	5,355

The FAA has received no definitive data regarding the cost estimates for the on-condition corrective actions required by this AD.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory 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, 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.

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–23–08 Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.): Amendment 39–22235; Docket No. FAA–2022–1409; Project Identifier AD–2022–01396–A.

(a) Effective Date

This airworthiness directive (AD) is effective November 2, 2022.

None.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (Viking) (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5520, Elevator Structure.

(e) Unsafe Condition

This AD was prompted by a recent investigation of a Viking Model DHC–3 airplane where the lock ring of the stabilizer actuator was found missing. The investigation revealed that the clamp nut that attaches the top eye end and bearing

assembly of the horizontal stabilizer actuator to the actuator barrel had unscrewed from the barrel. The investigation also found that the circular wire lock ring, which was designed to prevent the clamp nut from unscrewing, was not present. This condition, if not detected and corrected, could result in a reduction or loss of pitch control during flight with consequent loss of control of the airplane.

(f) Compliance

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

(g) Inspection

Within 10 hours time-in-service (TIS) after the effective date of this AD, perform a visual inspection of the stabilizer actuator to confirm that the stabilizer actuator lock ring is present, correctly seated in the groove in the upper housing, and engaged in the clamp nut. If the stabilizer actuator lock ring is missing or not correctly installed, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA, at the address in paragraph (k) of this AD.

Note to paragraph (g): Viking Service Letter DHC3–SL–27–001, dated October 25, 2022, contains information related to this AD.

(h) Torque Seal

Before further flight after the inspection required by paragraph (g) of this AD, apply a torque seal to the clamp nut and lock ring.

(i) Reporting Requirement

Within 10 days after the inspection required by paragraph (g) of this AD or within 10 days after the effective date of this AD, whichever occurs later, report the results of the inspection to the FAA at *9-avs-nyaco-cos@faa.gov*. Include the airplane serial number, airplane hours TIS, hours TIS since last actuator overhaul (if known), and whether the lock ring was present, missing, or incorrectly installed.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (k) of this AD or email to: *9-avs-nyaco-cos@faa.gov*. If mailing information, also submit information by email.

(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.

(3) For service information identified in this AD that is not incorporated by reference, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com*; website: *vikingair.com*.

(k) Related Information

For more information about this AD, contact Elizabeth Dowling, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; email: *9-avs-nyaco-cos@faa.gov*.

(l) Material Incorporated by Reference

None.

Issued on October 28, 2022.

Ross Landes,

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

[FR Doc. 2022–23899 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0859]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Delaware River, Philadelphia, PA; Safety Zone from 9:15 p.m. through 10 p.m. on November 12, 2022, to provide for the safety of life on navigable waterways during a barge-based fireworks display. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Philadelphia, PA. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation 33 CFR 165.506 will be enforced for the location identified in entry 10 of table 1 to paragraph (h)(1) from 9:15 p.m. through 10 p.m. on November 12, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, you may call or email Petty Officer Dylan Caikowski, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone 215–271–4814, email *SecDelBayWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in table 1 to paragraph (h)(1) to 33 CFR 165.506, entry No. 10 for a barge based fireworks display from 9:15 p.m. through 10 p.m. on November 12, 2022. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after a fireworks display. Our regulation for safety zones of fireworks displays within the Fifth Coast Guard District, table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 10 specifies the location of the regulated area as all waters of the Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within a 500-yard radius of the fireworks barge position. The approximate position for the display is latitude 39°57′39″ N, longitude 075°07′45″ W. During the enforcement period, as reflected in § 165.506(d), vessels may not enter, remain in, or transit through the safety zone unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on-scene.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via broadcast notice to mariners.

Dated: October 26, 2022.

Jonathan D. Theel,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2022–23719 Filed 11–1–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0325; FRL–10364–02–R3]

Air Plan Approval; Maryland; Clean Data Determination and Approval of Select Attainment Plan Elements for the Anne Arundel County and Baltimore County, MD Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination that the the Anne Arundel County and Baltimore County, Maryland sulfur dioxide (SO_2) nonattainment area has attained the 2010 primary SO_2 national ambient air quality standard (2010 SO_2 NAAQS). Under EPA's Clean Data Policy, certain Clean Air Act (CAA) planning requirements are suspended for a nonattainment area when EPA issues a determination that air quality

data demonstrate that the NAAQS is being attained. EPA deems these suspended CAA requirements as no longer applicable for as long as air quality continues to meet the NAAQS. EPA is also simultaneously approving elements of Maryland's January 31, 2020 state implementation plan (SIP) revision submittal containing an attainment plan for the Anne Arundel County and Baltimore County SO_2 nonattainment area (referred to hereafter as the Anne Arundel-Baltimore County Area, or simply the Area). The attainment plan elements EPA is approving are not suspended by a determination of attainment under EPA's Clean Data Policy, because EPA considers them independent of planning requirements that are designed to help the area attain the NAAQS. Finally, EPA is approving as SIP strengthening measures certain emission limit requirements on large SO_2 emission sources that were submitted as part of Maryland's attainment plan. This clean data determination (CDD) and partial approval of Maryland's attainment plan SIP revision does not constitute redesignation of the Area to attainment or full approval of the submitted attainment plan. This action is being taken under the CAA.

DATES: This final rule is effective on December 2, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0325. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material or voluminous modeling files, are either available for download on the internet (as described in a docket file index) or are not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning and Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2176. Mr. Rehn can also be reached via electronic mail at *rehn.brian@epa.gov.*

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

I. Background

On August 19, 2022 (87 FR 51006), EPA proposed to determine that the Anne Arundel-Baltimore County nonattainment area is attaining the 2010 SO_2 NAAQS, based on complete, quality assured, and certified ambient air quality monitoring data and an EPA-prepared air dispersion modeling analysis of SO_2 emission sources in the Area. This determination of attainment, also referred to as a CDD, suspends certain planning requirements for the nonattainment area for as long as the area continues to attain the 2010 SO_2 NAAQS. EPA proposed to require the Maryland Department of Environment (MDE) to submit annual statements to EPA (due by July 1 of each year after the final CDD), to address whether the Area continues to attain the 2010 SO_2 NAAQS. EPA expects that these statements would include at least available air quality monitoring data, an assessment of changes in SO_2 emissions from existing or new sources, and discussion of whether these changes warrant updated modeling.

As described in the August 19, 2022 (87 FR 51006) notice of proposed rulemaking (NPRM), EPA's Clean Data Policy allows for the suspension of CAA requirements that are specifically designed to help an area achieve attainment for as long as the nonattainment area continues to attain the NAAQS.[1] A final CDD suspends the obligation to submit: attainment demonstrations, reasonably available control measures and reasonably available control technology (RACM/RACT) emission control measures, reasonable further progress (RFP) demonstrations, emissions limitations and control measures as necessary to provide for attainment, and contingency measures. All remaining CAA 172(c) nonattainment plan provisions not suspended by a final CDD must still be submitted, including requirements not related to attainment planning such as a base year emissions inventory and nonattainment new source review (NNSR) requirements of the plan.

While issuance by EPA of a final CDD suspends certain attainment planning requirements so long as the Area continues to attain the 2010 SO_2 NAAQS, a final CDD does not constitute a redesignation of an area to attainment of the 2010 SO_2 NAAQS under section 107(d)(3) of the CAA. After issuance of a final CDD, the area remains designated nonattainment for the 2010 SO_2 NAAQS until the state formally requests redesignation of the area to attainment, EPA takes formal action to determine that the area meets CAA requirements for redesignation, and EPA approves an accompanying state-submitted maintenance plan that ensures the area will continue to meet the NAAQS for the successive 10-year period.

II. Summary of SIP Revision and EPA Analysis

EPA's August 19, 2022 (87 FR 51006) NPRM proposed to approve into the Maryland SIP the base year emissions inventory and NNSR elements of an attainment plan submitted by the State of Maryland as a SIP revision request on January 30, 2022. Additionally, EPA proposed to approve into the Maryland SIP (as a SIP strengthening measure) two consent orders governing emissions limits on major SO_2 sources in the Area that were submitted by Maryland as part of the January 30, 2020 SIP revision. These include a consent order between MDE and Raven Power Fort Smallwood LLC (governing the Wagner and Brandon Shores electric generating stations, both located at the Fort Smallwood Complex) and a consent order between MDE and C.P. Crane LLC (governing the Crane electric generating station).[2] These consent orders establish enforceable SO_2 emission limits and operational limitations at both the Fort Smallwood Complex and the Crane facilities.

A detailed analysis of EPA's proposed decision was provided in the August 19, 2022 (87 FR 51006) NPRM, and its associated technical support documents (TSDs), and will not be restated here. The public comment period for this NPRM ended on September 29, 2022.

III. Response to Comments

EPA received one citizen comment on the proposed action during the public comment period. That commenter was

[1] *See* section VII.C. of EPA's ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' dated April 2014. *See* also, Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, titled, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995.

[2] *See* Appendix B of Maryland's January 30, 2020 attainment plan SIP revision request to EPA. Specifically, Appendix B-1—Consent Order—Brandon Shores and Wagner Generating Stations, dated December 4, 2019; and Appendix B-2—Consent Order—C.P. Crane Generating Station, dated October 9, 2019.

generally supportive of EPA's proposed CDD and approval of selected Maryland attainment plan elements—specifically the base year emissions inventory for the Area and consent decrees between MDE and two major SO_2 emission source owners in the Area. The commenter also suggested additional recommendations to EPA regarding treatment of the Area with respect to nonattainment designation and future planning efforts for the Area. EPA acknowledges these supportive comments. EPA is addressing the commenter's specific comment below.

Comment: Although the commenter agrees with EPA's proposed issuance of a CDD and that the suspension of certain attainment plan elements (*e.g.,* an attainment demonstration) is reasonable and meritorious, the commenter asks that ''nonattainment be upheld'' and that if Maryland fails in the future to submit a SIP mandated by a nonattainment deadline, then EPA should act expeditiously to enact a Federal Implementation Plan (FIP) to avoid lag of action.

Response: A CDD is not equivalent to a redesignation to attainment under CAA section 107(d)(3). The CAA's requirements pertaining to nonattainment areas continue to apply to this Area (although some nonattainment planning requirements are suspended by the CDD). In order to be redesignated from nonattainment to attainment, the state will need to meet the statutory criteria for a redesignation, including the submission of a SIP to demonstrate that the Area will maintain the NAAQS for ten years following redesignation. Once this CDD is finalized and while it is in place, Maryland does not have an obligation to submit a future nonattainment planning SIP, and that suspension remains until the Area is redesignated to attainment (after which time such requirements are permanently discharged), or until EPA determines that the Area has re-violated the SO_2 NAAQS and rescinds the CDD. In the event the Area re-violates the NAAQS, and EPA rescinds the CDD, the state's obligation to submit all required attainment plan elements for the nonattainment Area will be reinstated.

EPA received no other comments, on either the determination of attainment or on EPA's proposed approval of selected elements of Maryland's January 30, 2020 attainment plan for the Area. After consideration of public comments received, EPA is finalizing the August 19, 2022 (87 FR 51006) proposed finding that the Anne Arundel-Baltimore County Area is attaining the 2010 SO_2 NAAQS. EPA is therefore finalizing the CDD for the Area.

IV. Final Action

EPA is approving the CDD for the Anne Arundel-Baltimore County, Maryland nonattainment area, the complete description of which can be found at 40 CFR 81.321.[3]

EPA's final determination suspends the requirements for an attainment demonstration and certain other associated nonattainment planning requirements for the Anne Arundel-Baltimore nonattainment area so long as the Area continues to attain the 2010 SO_2 NAAQS. As indicated in the proposal on this action, a final CDD action suspends certain planning requirements for a CAA part D nonattainment area SIP, including: an attainment demonstration, RACM/RACT, enforceable emission limitations and control measures, RFP plan, and contingency measures. This final action does not constitute a redesignation of the Anne Arundel-Baltimore County Area to attainment of the 2010 SO_2 NAAQS under section 107(d)(3) of the CAA. The Area will remain designated nonattainment for the 2010 SO_2 NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes further action to redesignate the Area.

Following approval of a CDD for the Area, the State remains obligated to submit the non-attainment planning requirements, including a base year emissions inventory and a showing that the area is covered by an EPA-approved NNSR program. EPA is finalizing approval (as proposed in our August 19, 2022 proposal) of the base year emission inventory and NNSR program elements of the attainment plan SIP revision for the Anne Arundel-Baltimore Area submitted by Maryland to EPA on January 31, 2020. EPA has determined that Maryland's 2014 base year emission inventory for the Area comports with relevant EPA guidance. EPA is also finalizing our approval of Maryland's NNSR program under CAA section 172(c)(5), having determined that the program meets applicable requirements for NNSR under CAA section 173 for SO_2 sources undergoing construction or major modification in the Area. EPA's final action to issue the CDD and to approve the emissions inventory and NNSR elements of Maryland's SIP discharges EPA's duty under the consent decree entered in *Center for Biological Diversity, et al.,* v. *Regan,* Case No. 4–21–cv–06166–JST (N.D. Cal.), to no later than October 31, 2022, take action on the emissions inventory and NNSR elements of Maryland's SIP submission, and also automatically terminates EPA's obligation under that consent decree to take final action on the attainment demonstration, RACM/RACT, RFP and contingency measure elements of Maryland's submission.

Finally, EPA is approving as SIP strengthening measures two consent orders between MDE and the owners of two major SO_2 emissions sources in the Area. These consent orders were submitted as part of the January 30, 2020 Maryland attainment plan for the Area and impose SO_2 emission limitation requirements and operational constraints on those sources.[4] EPA is incorporating these two consent orders by reference into the Maryland SIP, as proposed in the August 19, 2022 (87 FR 51006) proposed action, which will provide Federal enforceability of the emissions limits and operational constraints provided by those consent orders.

EPA is not approving in this action any other portion of the January 30, 2020 Maryland attainment plan SIP revision, other than the specific plan elements described above. Elements not being approved as part of this action include the section CAA 172(c)(1) attainment demonstration or RACM/RACT demonstration that were submitted as part of the January 30, 2020 attainment plan revision, the CAA 172(c)(2) RFP plan, the CAA section 172(c)(6) emission limits necessary to provide for attainment, or the CAA section 172(c)(9) contingency measures elements. As noted above, these attainment plan elements are suspended (as is EPA's obligation to promulgate a FIP to address those planning elements) for as long as EPA's CDD for the Area remains in place.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference two consent orders between MDE and Raven Power LLC,

[3] The nonattainment area consists of ''portions of Anne Arundel County that are within 26.8 kilometers (16.7miles) of Herbert A. Wagner's Unit 3 stack, which is located at 76.52752 W. longitude, 39.17765 N. latitude (-76.52752, 39.17765), and portions of Baltimore County that are within 26.8 kilometers (16.7 miles) of Herbert A. Wagner's Unit 3 stack,'' at the same latitude and longitude. Excluded from the nonattainment area is Baltimore City—portions of which are located within a 26.8 kilometers (16.7 miles) radius of the Wagner Unit 3 stack.

[4] *See* Appendix B of the January 30, 2020 attainment plan SIP Revision. Specifically, Appendix B1—Consent Order—Brandon Shores and Wagner Generating Stations, dated December 4, 2019; and Appendix B–2: Consent Order—C.P. Crane Generating Station, dated October 9, 2019.

and MDE and C.P. Crane LLC, governing SO_2 emissions limitations and operating limitations at the Fort Smallwood Complex electric generating stations (*i.e.,* Wagner and Brandon Shores) and the Crane electric generating station—as submitted to EPA as Appendix B of Maryland's January 30, 2020, SO_2 attainment plan SIP revision. The emissions limitations and operating restrictions on the affected SO_2 sources are described below and in Section IV of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

The two consent orders being incorporated by reference into the SIP establish SO_2 emission limits for these facilities (beginning in January 2019 and additional limits beginning in 2021), as summarized herein. Effective October 2019, Crane Units 1 and 2 are limited to combined SO_2 emissions of 2,900 pounds per hour (lbs/hr SO_2). Beginning January 2021, Brandon Shores Units 1 and 2 and Wagner Unit 3 combined (whether operating individually or in tandem) are limited to 3,860 lb/hr SO_2, on a 30-day rolling average basis. Beginning January 2021, Brandon Shores Units 1 and 2 (operating either individually or in tandem) shall not exceed a cumulative total of 435 hours per calendar year when the applicable units are operating at a combined $S0_2$ emissions rate greater than 2,851 pounds per hour. Beginning January 2021, Brandon Shores Units 1 and 2 cannot exceed 9,980 lbs/hr SO_2, on a 3-hour rolling average basis. Beginning January 2021, Brandon Shores Units 1 and 2 combined are limited to three hours per calendar year with combined emissions greater than 5,150 lbs/hr SO_2 (on a 1-hour average basis) when Wagner Unit 3 is not operating; and are limited to 435 hours per calendar year of combined emissions greater than 2,851 lbs/hr SO_2 when Wagner Unit 3 is also operating. Wagner Unit 3 alone cannot emit more than 3,289 lbs/hr SO_2 (on a 1-hour averaging basis); is limited to emitting 1,904 lbs/hr SO_2 (on a 30-day rolling average); and is limited to 336 hours per calendar year of emissions greater than 2,299 lbs/hr SO_2 (on a 1-hour averaging basis).

Beginning January 2021, Wagner Unit 1 alone shall not emit more than 480 lbs/hour SO_2 (on a 1-hour averaging basis); and is limited to operating 438 hours per calendar year burning fuel oil. Beginning January 2021, at all times when operating, Wagner Unit 3 shall not exceed 1,904 lbs/hr SO_2 (as measured on a 30-day rolling average); and Unit 3 shall not exceed a maximum rate of 3,289 lbs/hr SO_2 at all times when operating (on a 1-hour average basis). Beginning January 2021, at all times when operating, Wagner Unit 3 shall not exceed a cumulative total operation of 336 hours per calendar year when the Unit's $S0_2$ emissions rate is greater than 2,299 lbs/hr SO_2 (on a one-hour average basis). Beginning January 2021, Wagner Unit 4 alone cannot emit more than 1,350 lbs/hr SO_2 (on a 1-hour average basis); and is limited to operating 438 hours per calendar year using fuel oil—though both Units 1 and 4 can operate additional hours each year using natural gas. By July 2020, Wagner Unit 2 was required to cease operation or to convert from burning coal to burning natural gas.

EPA has reviewed Maryland's consent decrees with major SO_2 emission sources in the Area formalizing specific SO_2 emission limits and emissions control requirements for those large SO_2 sources (as described above) under a consent order between MDE and Raven Power Fort Smallwood LLC and a consent order between MDE and C.P. Crane LLC that require enforceable SO_2 limits and operational limitations at the Fort Smallwood Complex and at the Crane facility.[5] By incorporating these consent decrees between MDE and Raven Power into the Maryland SIP, EPA's incorporation by reference of these two consent orders strengthens the SIP and makes these additional permitted limits and operating conditions federally enforceable. This action is being taken under sections 110 and 113 of the CAA. As of the effective date of the final rulemaking of EPA's approval, these consent orders are incorporated by reference, to be reflected in the next update to the SIP compilation.[6]

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, EPA's action to approve the emissions inventory and NNSR submissions merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. EPA's issuance of the CDD makes a determination of attainment and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

[5] *See* Appendix B of Maryland's January 30, 2020 attainment plan SIP revision request to EPA. Specifically, Appendix B1—Consent Order—Brandon Shores and Wagner Generating Stations, dated December 4, 2019; and Appendix B-2: Consent Order—C.P. Crane Generating Station, dated October 9, 2019.

[6] 62 FR 27968 (May 22, 1997).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action.

This final CDD action and accompanying final approval of select elements of Maryland's January 30, 2020 SO_2 attainment plan may not be challenged later in proceedings to enforce this action's requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. Amend § 52.1070:

■ a. In the table in paragraph (d) by adding entries ''Raven Power Fort Smallwood LLC—Brandon Shores Electric Generating Station Units 1 and 2; and H.A. Wagner Electric Generating Station Units 1, 2, 3, and 4'' and ''C.P. Crane LLC—C.P. Crane Electric Generating Station Units 1 and 2'' at the end of the table; and

■ b. In the table in paragraph (e) by adding entries ''2014 SO_2 Base Year Emissions Inventory for the Anne Arundel-Baltimore County Area for the 2010 SO_2 Sulfur Dioxide NAAQS'' and ''2010 1-Hour SO_2 Sulfur Dioxide NAAQS Nonattainment New Source Review Requirements'' at the end of the table.

The additions read as follows:

§ 52.1070 Identification of plan.

* * * * *

(d) * * *

Name of source	Permit No./type	State effective date	EPA approval date	Additional explanation
* *	* *		*	* *
Raven Power Fort Smallwood LLC—Brandon Shores Electric Generating Station Units 1 and 2; and H.A. Wagner Electric Generating Station Units 1, 2, 3, and 4.	Consent Order for Brandon Shores and Wagner Generating Stations for Sulfur Dioxide Emissions Limits and Operational Constraints.	12/4/2019	11/2/2022, [Insert **Federal Register** Citation].	Consent Order approved via Docket EPA–R03–OAR–2020–0325, as an element of Maryland's January 30, 2020 attainment plan for the Anne Arundel-Baltimore Nonattainment Area under the 2010 1-hour SO_2 NAAQS.
C.P. Crane LLC—C.P. Crane Electric Generating Station Units 1 and 2.	Consent Order for Crane Generating Station for Sulfur Dioxide Emissions Limits and Cessation of Coal-fired Combustion.	10/9/2019	11/2/2022, [Insert **Federal Register** Citation].	Consent Order approved via Docket EPA–R03–OAR–2020–0325, as an element of Maryland's January 30, 2020 attainment plan for the Anne Arundel-Baltimore Nonattainment Area under the 2010 1-hour SO_2 NAAQS.

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *		*	* *
2014 SO_2 Base Year Emissions Inventory for the Anne Arundel-Baltimore County Area for the 2010 SO_2 Sulfur Dioxide NAAQS.	Anne Arundel- Baltimore County SO_2 Nonattainment Area, as defined at 40 CFR 81.321.	01/30/2020	11/2/2022, [Insert **Federal Register** Citation].	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2010 1-Hour SO_2 Sulfur Dioxide NAAQS Nonattainment New Source Review Requirements.	Anne Arundel- Baltimore County SO_2 Nonattainment Area.	01/30/2020	11/2/2022, [Insert **Federal Register** Citation].	EPA approved Maryland's Nonattainment New Source Review (NNSR) program under COMAR 26.11.17 into the Maryland SIP most recently on August 2, 2012 and July 13, 2015.

■ 4. Amend § 52.1082 by adding paragraph (l) to read as follows:

§ 52.1082 Determinations of attainment.

* * * * *

(l) EPA has determined, as of November 2, 2022, that based on 2019 to 2021 ambient air quality monitoring data and air dispersion modeling, the Anne Arundel-Baltimore County nonattainment area has attained the 2010 1-hour sulfur dioxide NAAQS. This clean data determination suspends the requirement for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other sulfur dioxide NAAQS attainment plan SIP elements for as long as this area continues to meet the 2010 1-hour sulfur dioxide NAAQS.

[FR Doc. 2022–23709 Filed 11–1–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0788; EPA–R05–OAR–2020–0353; FRL–9879–02–R5]

Air Plan Approval; Indiana; Infrastructure SIP Requirements for the 2015 Ozone NAAQS and References to the Code of Federal Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from Indiana regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also approving revisions to the Indiana SIP that would incorporate by reference a more recent edition of the Code of Federal Regulations (CFR). EPA proposed this action on June 29, 2022, and received no comments.

DATES: This final rule is effective on December 2, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0788 or EPA–R05–OAR–2020–0353. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Andrew Lee, Physical Scientist, at (312)–353–7645 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrew Lee, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)–353–7645, *lee.andrew.c@epa.gov.*

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

I. Background Information

On June 29, 2022 (87 FR 38693), EPA proposed to approve most elements of a November 2, 2018, submission from the Indiana Department of Environmental Management (IDEM) intended to address most applicable infrastructure requirements for the 2015 ozone NAAQS. Additionally, EPA proposed to approve a June 24, 2020, submission from IDEM that seeks to revise the Indiana SIP by incorporating by reference updated rules at 326 IAC 1–1–3 (References to the Code of Federal Regulations) with an effective date of April 4, 2020. The revision to 326 IAC 1–1–3 identifies that, unless otherwise indicated, any reference within 326 IAC to a provision of the CFR shall mean the July 1, 2018, edition. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on July 29, 2022. EPA received no comments on the proposal. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving most elements of a submission from IDEM certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2015 ozone NAAQS. EPA is not acting on the interstate transport requirements of section 110(a)(2)(D)(i)(I) and visibility impairment requirements of section 110(a)(2)(D)(i)(II). EPA has proposed action in a separate rulemaking on the portion of the submission pertaining to the interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to the 2015 ozone NAAQS. See 87 FR 9838. EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2), are contained in the table below.

Element	2015 Ozone
(A)—Emission limits and other control measures	A
(B)—Ambient air quality monitoring/data system	A

Element	2015 Ozone
(C)1—Program for enforcement of control measures	A
(C)2—Minor NSR	A
(C)3—PSD	A
(D)1—I Prong 1: Interstate transport—significant contribution to nonattainment	NA
(D)2—I Prong 2: Interstate transport—interference with maintenance	NA
(D)3—II Prong 3: Interstate transport—interference with PSD	A
(D)4—II Prong 4: Interstate transport—interference with visibility protection	NA
(D)5—Interstate and international pollution abatement	A
(E)1—Adequate resources	A
(E)2—State board requirements	A
(F)—Stationary source monitoring system	A
(G)—Emergency powers	A
(H)—Future SIP revisions	A
(I)—Nonattainment planning requirements of part D	(*)
(J)1—Consultation with government officials	A
(J)2—Public notification	A
(J)3—PSD	A
(J)4—Visibility protection	(*)
(K)—Air quality modeling/data	A
(L)—Permitting fees	A
(M)—Consultation/participation by affected local entities	A

In the above table, the key is as follows:

A Approve
NA No Action/Separate Rulemaking
* Not germane to infrastructure SIPs

EPA is also approving the June 24, 2020, submission from Indiana, which revises the Indiana SIP by incorporating by reference the more recent July 1, 2018, edition of the CFR.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in Section I of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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).

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

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[1] 62 FR 27968 (May 22, 1997).

List of Subjects in 40 CFR Part 52

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

Dated: October 21, 2022.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Amend § 52.770 by:

■ a. In paragraph (c), amend the table by revising the entry for 1–1–3 ''References to the Code of Federal Regulations'' under Article 1, Rule 1 ''Provisions Applicable Throughout Title 326''.

■ b. In paragraph (e), amend the table by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS'' after the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS''.

The revision and addition read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
1–1–3	References to the Code of Federal Regulations.	6/24/2020	11/2/2022, [INSERT **Federal Register** CITATION].	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS.	11/2/2018	11/2/2022, [INSERT **Federal Register** CITATION].	All CAA infrastructure elements have been approved except (D)(i)(I) and the visibility portion of (D)(i)(II).
*	*	*	*

* * * * *

[FR Doc. 2022–23335 Filed 11–1–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0134; FF09E21000 FXES1111090FEDR 232]

RIN 1018–BG93

Endangered and Threatened Wildlife and Plants; Possible Effects of Court Decision on Significant Portion of the Range Analysis for the Northern Distinct Population Segment of the Southern Subspecies of Scarlet Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notification of additional analysis and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are seeking public comment on how recent case law on the Service's significant portion of the range (SPR) policy and the plain language of the Endangered Species Act (Act) may affect our February 26, 2019, final rule designating the northern distinct population segment (DPS) of the southern subspecies of scarlet macaw (*Ara macao macao*), as a threatened species under the Endangered Species Act of 1973, as amended (Act).

DATES: We will accept comments received or postmarked on or before December 2, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2022–0134, which is the docket number for this rulemaking. Then, click on the Search button. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2022–0134, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, Chief, Division of Conservation and Classification, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

In response to a petition for rulemaking, on July 6, 2012, we published in the **Federal Register** (77 FR 40222) a proposed rule to list as endangered under the Act (16 U.S.C. 1531 *et seq.*) the northern subspecies of scarlet macaw (*Ara macao cyanoptera*) and the northern DPS of the southern subspecies of scarlet macaw (*A. m. macao*). That document also announced our finding that listing the southern DPS of *A. m. macao* as endangered or threatened was not warranted.

On April 7, 2016, we published in the **Federal Register** (81 FR 20302) a revised proposed rule that made changes to the July 6, 2012, proposed rule. Changes we proposed in the April 7, 2016, revised proposed rule included, but were not limited to, revising our proposed listing of the northern DPS of *A. m. macao* from endangered to threatened and proposing to treat the southern DPS of *A. m. macao* and subspecies crosses (*A. m. macao* and *A. m. cyanoptera*) as threatened based on similarity of appearance. The proposed rule also included a proposed section 4(d) rule for the northern DPS of *A. m. macao,* southern DPS of *A. m. macao,* and subspecies crosses.

On February 26, 2019, we published in the **Federal Register** (84 FR 6278) a final rule listing the northern subspecies of scarlet macaw (*A. m. cyanoptera*) as endangered, the northern DPS of the southern subspecies (*A. m. macao*) as threatened, the southern DPS of the southern subspecies (*A. m. macao*) and subspecies crosses (*A. m. cyanoptera* and *A. m. macao*) as threatened due to similarity of appearance, and finalizing the section 4(d) rule.

In *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. Jan. 28, 2020) (*CBD* v. *Everson*), the Court vacated the provision of the ''Policy on Interpretation of the Phrase 'Significant Portion of Its Range' in the ESA's Definitions of Endangered Species and Threatened Species'' (79 FR 37578; July 1, 2014), issued jointly by the Service and the National Marine Fisheries Service, which provides that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

This Action

We are reexamining the SPR analysis for the northern DPS of the southern subspecies of scarlet macaw (*A. m. macao*). On August 29, 2022, the U.S. District Court for the District of Columbia granted our motion for voluntary remand without vacatur of the threatened finding and section 4(d) rule for the northern DPS of the southern subspecies of scarlet macaw (*Friends of Animals* v. *Williams,* No. 1:21–cv–02081–RC, Doc. 22). As submitted to and approved by the Court, we will reconsider our SPR analysis based on the plain language of the Act and the implications of *CBD* v. *Everson,* and submit our findings to the **Federal Register** by March 28, 2023. If the SPR analysis determines that there are no significant portions of the range for the northern DPS of the southern subspecies of scarlet macaw, the SPR analysis ends the process. If the SPR analysis determines that one or more significant portions of the range exist but do not warrant endangered status, the SPR analysis ends the process. However, if the SPR analysis finds one or more significant portions of the range and finds the northern DPS of the southern subspecies of scarlet macaw should be listed as endangered instead of threatened, we will submit a proposed rule to the **Federal Register** by March 28, 2024, seeking public comment on the proposed reclassification of the northern DPS of the southern subspecies of scarlet macaw. Throughout this process, the February 26, 2019, final rule (84 FR 6278) remains in effect, including with respect to the threatened listing and section 4(d) rule for the northern DPS of the southern subspecies of scarlet macaw.

Request for Public Comments

We invite written comments on the manner in which the plain language of the Act and *CBD* v. *Everson* decision may affect our February 26, 2019, final rule designating the northern DPS of the southern subspecies of scarlet macaw (*A. m. macao*) as a threatened species. Specifically, we are interested in public input on whether and how the *CBD* v. *Everson* opinion affects the SPR analysis in the threatened determination.

We request comments from any interested party that pertain to the issues raised in the preceding paragraph only.

Public Availability of Comments

If you submit a comment via *https://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.* Comments and materials we receive will be available for public inspection at *https://www.regulations.gov.*

Author

The primary authors of this announcement are the staff members of the U.S. Fish and Wildlife Service's Branch of Delisting and Foreign Species.

Authority

This document is published under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–23812 Filed 11–1–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2021–0025; FF09M31000–234–FXMB12320900000]

RIN 1018–BF59

Migratory Bird Permits; Administrative Updates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: On January 7, 2022, the U.S. Fish and Wildlife Service (Service) published a final rule to renumber, rename, and rearrange certain subparts and sections in our regulations. In that rule, we incorrectly presented an amendatory instruction, which prevented the complete codification of the regulatory text we set forth for one section of the regulations. In this document, we correctly set forth the

amendatory instruction and the relevant regulatory text. This technical amendment is a purely administrative action; it simply corrects one amendatory instruction to codify regulations we previously published in our January 7, 2022, final rule.

DATES: This rule is effective November 2, 2022.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director—Migratory Birds Program, U.S. Fish and Wildlife Service, telephone: 703–358–2606, email: *MB_mail@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is the Federal agency delegated with the primary responsibility for managing migratory birds. Our authority derives from the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 *et seq.* (MBTA) and the Bald and Golden Eagle Protection Act, 16 U.S.C. 668 *et seq.* (Eagle Act). Regulations pertaining to migratory bird permits are set forth at 50 CFR part 21. Regulations pertaining to eagle permits are set forth at 50 CFR part 22.

The regulations at 50 CFR parts 21 and 22 were established in 1974. Since 1974, we have published many rules to add, revise, or remove portions of these regulations. On January 7, 2022, we published a final rule (87 FR 876) to renumber, rename, and rearrange certain subparts and sections in parts 21 and 22 of subchapter B of chapter I, title 50 of the Code of Federal Regulations (CFR).

The January 7, 2022, final rule also updated applicable Office of Management and Budget (OMB) control numbers to provide the currently approved OMB control numbers for the information collection requirements in 50 CFR parts 21 and 22. These updates provide a consistent approach to the presentation of this information in our regulations and, for those affected sections, streamline our regulations to codify only the information needed to notify the public that the information collection requirements are approved by OMB.

In the January 7, 2022, final rule (87 FR 876), we set forth information collection requirements at a new paragraph (g) of 50 CFR 21.168 (''Public health control order for resident Canada geese.''; see 87 FR 883), but our relevant amendatory instruction neglected to instruct the Office of the Federal Register to ''add'' that new paragraph. Therefore, the new paragraph was not codified when the January 7, 2022, final rule became effective. With this document, we add paragraph (g) to 50 CFR 21.168 with the same text presented in the January 7, 2022, final rule.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 21 of subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: 16 U.S.C. 703–712.

■ 2. Amend § 21.168 by adding paragraph (g) to read as follows:

§ 21.168 Public health control order for resident Canada geese.

* * * * *

(g) *Information collection requirements.* The Office of Management and Budget (OMB) has approved the information collection requirements associated with this control order and assigned OMB Control Number 1018–0146. Federal agencies 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. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

Madonna Baucum,

Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.

[FR Doc. 2022–23607 Filed 11–1–22; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 87, No. 211
Wednesday, November 2, 2022

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

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Rule

AGENCY: Federal Trade Commission.

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

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is considering whether to initiate a rulemaking proceeding to amend its Trade Regulation Rule entitled ''Funeral Industry Practices Rule'' (''Funeral Rule'' or ''Rule''). The Rule defines unfair and deceptive practices in the sale of funeral goods and services and prescribes preventative requirements to protect against these practices. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Comments must be received on or before January 3, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Instructions for Submitting Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Funeral Rule ANPR, Project No. P034410'' on your comment, and file your comment online at *https://www.regulations.gov.* If you prefer to file on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Melissa Dickey, (202) 326–2662, *mdickey@ftc.gov,* or Rebecca Plett, (202) 326–3664, *rplett@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is publishing this document pursuant to Section 18 of the Federal Trade Commission (''FTC'') Act, 15 U.S.C. 57a, and the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7 through 1.20, and 5 U.S.C. 553. This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Commission issued the Funeral Rule on September 24, 1982, and it became fully effective on April 30, 1984.[1] The Funeral Rule's goals are to lower barriers to price competition in the funeral goods and services market and to facilitate informed consumer choice.[2] The Rule helps to achieve these goals by ensuring that: (1) consumers have access to sufficient information to permit them to make informed decisions; (2) consumers are not required to purchase goods and services that they do not want and are not required by law to purchase; and (3) misrepresentations are not used to influence consumers' decisions.[3]

Among other things, the Rule specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods or services used in connection with the disposition of deceased human remains;[4] (2) condition the furnishing of any funeral good or funeral service upon the purchase of any other funeral good or funeral service or charge a fee as a condition to furnishing any goods or services, such as a ''casket handling'' fee to consumers who provide their own casket;[5] or (3) embalm the deceased for a fee without authorization when embalming is not required by law.[6] The Rule also specifies that it is a deceptive act or practice for a funeral provider to misrepresent certain legal or cemetery requirements, including those for embalming, caskets, or burial containers, or any other funeral good or service.[7]

The Rule sets forth preventative requirements in the form of itemized price and information disclosures to ensure funeral providers do not engage in the unfair or deceptive acts or practices described in the foregoing paragraph. First, the Rule requires funeral providers to give persons inquiring in-person about funeral goods or services a General Price List (''GPL'') to keep, which lists the goods and services they offer and their itemized prices, along with specific disclosures.[8] Second, the Rule requires funeral providers to show persons inquiring in-person a Casket Price List (''CPL'') identifying the caskets and alternative containers they carry, and an Outer Burial Container Price List (''OBCPL'') listing the vaults and grave liners they offer, along with specific disclosures.[9] Third, funeral providers are required to tell persons ''who ask by telephone about the funeral provider's offerings or prices . . . any accurate information'' from the GPL, CPL, or OBCPL, ''and any other readily available information that reasonably answers the question.''[10] Fourth, the Rule requires funeral providers to give an itemized statement showing all the items a customer has selected and the itemized and total costs for those goods and services, along with other specific disclosures, at the conclusion of the discussion of arrangements.[11]

II. Regulatory Review of the Funeral Rule

On February 14, 2020, the Commission initiated a review of the Rule.[12] The Commission solicited comments on, among other things: (1)

[1] Portions of the Rule became effective on January 1, 1984, and others became effective on April 30, 1984. 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984). Several funeral providers challenged the Rule, but it was upheld by the Fourth Circuit. *Harry and Bryant Co.* v. *FTC,* 726 F.2d 993 (4th Cir.), *cert. denied,* 469 U.S. 820 (1984). The Rule was amended on July 19, 1994 (59 FR 1592 (Jan. 11, 1994)), and the Third Circuit upheld the amended Rule following a challenge. *Pennsylvania Funeral Directors Ass'n, Inc.* v. *FTC,* 41 F.3d 81, 83 (3d Cir. 1994). On March 14, 2008, the Commission completed a regulatory review and concluded that the Rule was still needed and should be retained. 73 FR 13740 (Mar. 14, 2008).

[2] Original Funeral Rule Statement of Basis and Purpose, 47 FR 42260 (Sept. 24, 1982).

[3] *Id.*

[4] 16 CFR 453.2(a).

[5] 16 CFR 453.4(b).

[6] 16 CFR 453.5(a).

[7] See 16 CFR 453.3 through 453.5 (listing additional unfair and deceptive acts and preventative requirements).

[8] 16 CFR 453.2(b)(4).

[9] 16 CFR 453.2(b)(2)-(3).

[10] 16 CFR 453.2(b)(1).

[11] 16 CFR 453.2(b)(5).

[12] Rule Review 2020, 85 FR 8490 (Feb. 14, 2020), available at *https://www.federalregister.gov/documents/2020/02/14/2020-02803/funeral-industry-practices-rule.*

the economic impact of, and the continuing need for, the Funeral Rule; (2) the Rule's benefits to consumers; and (3) the burden it places on industry members subject to the requirements, including small businesses. The Commission also asked specific questions about a number of topics, including whether funeral providers should be required to post their price list information online.

The Rule Review generated significant interest, receiving 785 comments.[13] The vast majority (689 comments) came from individuals. Most commenters expressed support for the Rule.[14] Commenters credited the Rule with improving consumers' ability to make informed decisions.[15] Two associations stated that the Rule facilitates consumer choice.[16] Another commented that the Rule ''level[s] the playing field'' for funeral providers, protects consumers from bad actors, and ''serves as an enforcement mechanism.''[17] Commenters also reported that the Rule facilitates price transparency, gives consumers ''a clearer idea of the services they are purchasing'' and the prices for those services, and allows consumers to select only the items they want to buy.[18] One group also claimed that the Rule acts as a restraint on price gouging.[19] In addition, one trade group stated that the Rule encouraged funeral providers to become better businesses by forcing them to ''examine their costs, prices, and profits.''[20]

Based on the comments received in response to the Rule Review, along with the prior rulemaking records and the Commission's experience enforcing the Rule, the Commission has determined the Rule continues to serve a useful purpose and should be retained. The Commission now seeks additional comment on possible modifications to the Funeral Rule.

III. Advance Notice of Proposed Rulemaking

The Commission publishes this advance notice of proposed rulemaking (ANPR) pursuant to FTC Rule § 1.10, 16 CFR 1.10. The notice identifies areas of inquiry under consideration, the objectives the Commission seeks to achieve, and possible regulatory alternatives.

After carefully reviewing all of the submitted comments,[21] the Commission is seeking additional input regarding the following seven topic areas: (1) whether and how funeral providers should be required to display or distribute their price information online or through electronic media; (2) whether funeral providers should be required to disclose third party crematory or other fees on the GPL; (3) whether the Rule's requirements regarding reduced basic services fees should be amended; (4) whether the Rule should be amended to account for new forms of disposition; (5) whether the Rule's embalming disclosure requirements should be amended; (6) whether the Rule should be changed to improve the readability of the price lists; and (7) whether changes should be made to the Rule to avoid negatively impacting underserved communities.

A. Online and Electronic Price Disclosure

The Review elicited a large number of comments about whether to require funeral providers to post their itemized price lists online or to distribute price information electronically.[22] Because the Rule was enacted 40 years ago, before websites, email, or social media were widely used, it only requires funeral providers to give price lists to in-person visitors. Funeral providers are not required to display or distribute their price information via any of these media.[23]

As discussed in more detail herein, since the Rule was enacted, consumers have changed how they shop and obtain price information, and some funeral providers have started selling or advertising their services and goods online.[24] In addition, the pandemic highlighted that some consumers are unable to visit funeral providers to obtain the price lists required by the Rule, including the immunocompromised, older adults, disabled individuals, individuals located in different states, the grieving, and individuals without access to a vehicle.[25] Yet, commenters almost universally report that many funeral providers are not making their price lists available electronically or on their websites, even when requested by consumers.[26] The FTC is therefore seeking further comment about whether the method by which price lists are distributed should be updated and the benefits and costs to consumers and

[13] All Rule Review comments are on the public record and are available for inspection at: *https://www.regulations.gov/docket/FTC-2020-0014*. The commenters included consumers, consumer advocates, individual businesses, industry groups, government agencies, and other organizations. The comments are cited as: [Commenter] RR [page number]. Individual commenters are identified by their first initial and last name. Companies and organizations are identified by abbreviated names.

[14] See, *e.g.,* New York State Funeral Directors Association (''NYSFDA'') RR at 2; International Cemetery, Cremation and Funeral Association (''ICCFA'') RR at 4; Select Independent Funeral Homes (''SIFH'') RR at 5; Funeral Consumer Alliance of the Virginia Blue Ridge (''FCA VABR'') RR at 1; Funeral Consumer Alliance of Western Massachusetts (''FCA WMA'') at 1; Funeral Consumer Alliance of Pennsylvania (''FCA PA'') at 1; Consumer Action (''CA'') RR at 1; Funeral Consumer Alliance of Connecticut (''FCA CT'') RR at 1; Funeral Consumers Alliance of Arizona (''FCA AZ'') RR at 1; Carriage Service (''Carriage'') RR at 1; The Consumer Federation of America (''CFA'') RR at 1 Consumer Checkbook (''CC'') RR at 1; Unitarian Universalist Fellowship of Visalia (''UUFV'') RR at 1; National Funeral Directors Association (''NFDA'') RR at 79. 157 consumers also explicitly expressed support for keeping the Rule. Two individual commenters said they did not see a continuing need for the rule, and one additional individual generally opposed the Rule. B. Small RR at 1 (many provisions in the Funeral Rule are appropriate, but this should be regulated by the states); B. Barcheers RR at 1 (Funeral Rule is no longer needed as ''the public is more aware now''); M. Matos RR at 1 (Funeral Rule is ''antiquated'' and there is no need to single out the funeral industry).

[15] CA RR at 1; see also Funeral Consumers Alliance (''FCA'') RR at 3; CFA RR at 2–4; N. Leyden-Morffi RR at 1.

[16] SIFH RR at 5; ICCFA RR at 5.

[17] NYSFDA RR at 2.

[18] CFA RR at 2; AARP RR at 1; CA RR at 1; UUFV RR at 1; Service Corporation International (''SCI'') RR at 14.

[19] CFA RR at 2.

[20] NFDA RR at 16. Almost all of the Rule's supporters asked for the Rule to be updated, modernized, amended, or changed. However, some industry advocates asked the Commission to keep the Rule as is. See Cremation Association of North America (''CANA'') RR at 2; ICCFA RR at 5–8; Carriage RR at 1; SCI RR at 1; Florida Cemetery, Cremation, and Funeral Association RR at 1–2 (advocating that further regulation should be left to the states).

[21] The Commission appreciates the commenters' submissions. All of the Rule Review comments are noticed and are part of the record.

[22] 527 comments filed by individuals (many of whom appear to be members of funeral consumer advocacy organizations) urged the Commission to require that at least some price information be made available online.

[23] At least two states, California and Oregon, have some requirements for funeral providers that maintain websites. Cal. Bus. & Prof. Code § 7685(b)(1) (''Each licensed funeral establishment that maintains an internet website shall post on its internet website the list of funeral goods and services that are required to be included in the establishment's general price list, pursuant to federal rule, and a statement that the general price list is available upon request.''); Or. Admin. R. 830–040–0050(6) (if a funeral establishment lists a price on its website, it must link to its General Price List).

[24] See infra notes 47–49.

[25] See infra notes 38–46. Under the Rule, funeral providers are required to tell persons ''who ask by telephone about the funeral provider's offerings or prices . . . any accurate information'' from the GPL, CPL, or OBCPL, ''and any other readily available information that reasonably answers the question.'' 16 CFR 453.2(b)(1). The Rule does not require funeral providers to give out the GPL, CPL, or OBCPL to consumers who call them. And some commenters commented that receiving price information over the telephone is not equivalent to or as helpful as receiving a written GPL. See infra note 33.

[26] See infra notes 34–37.

businesses if the Rule is updated in such a manner.

1. Summary of Comments

A. Comments Generally Supporting Online and Electronic Disclosure

Many commenters urged the Commission to update the Rule to require funeral homes to post their GPLs online, or at a minimum require providers to send the itemized price information electronically to persons who request it.[27] They argued that the incredible stress caused by a loss of a loved one,[28] consumers' limited experience with planning funerals,[29] and the need to quickly make decisions about what to do with a dead body[30] — ''combine to put the funeral consumer in a uniquely disadvantaged position.''[31]

Some commenters noted at least some funeral providers are willing to provide itemized price lists to consumers only when required by the Rule (which currently only requires itemized price lists to be provided during in-person meetings).[32] Numerous commenters reported funeral providers refused to provide their itemized price lists in response to requests by mail, email, fax, over the phone, or by using the contact form on the provider's website.[33]

Commenters also reported many funeral providers do not make their price lists available online, even if they have a website or other online presence.[34] A 2018 survey by the

[27] See, *e.g.,* Attorneys General of the District of Columbia, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin (''AG'') RR at 2; AARP RR at 2; House Energy and Commerce Committee (''House Committee'') RR at 2; Cleveland Memorial Society—M. Binning (''CMS'') RR at 1; Memorial Society of Georgia—T. Beale (''MSGA'') RR at 1; Funeral Consumer Alliance of Utah—J. Mitchell (''FCA UT'') RR at 1; Truth in Advertising, Inc. (''TINA'') RR at 2–3; Last Rights of Central Pennsylvania—L. Mulvey (''LRCPA'') RR at 1; Funeral Consumers Alliance of California, Advisory Committee for Cemetery & Funeral Bureau, Dept of Consumer Affairs, CA—J. Okuye RR at 1; Funeral Consumer Alliance of North Carolina—H. Williams (''FCA NC'') RR at 1; Funeral Consumers Alliance of Greater Kansas City (''FCA GKC'') RR at 1; FCA of Eastern Massachusetts (''FCA EMA'') RR at 1; Funeral Consumers Alliance of Greater Rochester (''FCA GR'') RR at 1; Peoples Memorial Association (''PMA'') at 1; FCA PA RR at 1; Funeral Consumers Alliance of South Carolina—O. Ganong (''FCA SC'') RR at 1; Funeral Consumers Alliance of Maine—Anthony Antolini (''FCA ME'') RR at 1; CA RR at 1; CFA RR at 6–10; Funeral Consumers Alliance of Central Texas—N. Walker (''FCA CTX'') RR at 1; Funeral Consumers Alliance of the Finger Lakes—W. Sinclair RR at 1; Funeral Consumers Alliance of Princeton—N. McCarty (''FCAP'') at 1; FCA CT RR at 1; Chicago Consumer Coalition (''CCC'')—D. McCurry RR at 1; FCA RR at 3–9; CC RR at 1; Consumer Reports (''CR RR'') at 2–3; FCA AZ RR at 1–2; Funeral Consumers Alliance of Minnesota (''FCA MN'') RR at 1; Texas Appleseed RR at 1; Balance for Life and Death—Neidra RR at 1; Imperial Caskets—D. Perkins (''Imperial Caskets'') RR at 1; Funerea Ltd. Company—M. Hamilton (''Funerea'') RR at 1; Out of the Box Funeral Planning—Susan Mackey (''OBFP'') RR at 1; Peace of Mind—C. Andrews RR at 1; Charter Funerals—S. Minich (''Charter Funerals'') RR at 1; Cindys List Funeral Concierge & Inheritance Protection—C. Ivey RR at 1; Homesteaders Life Co.—M. Lacey (''HLC'') RR at 1; On the Record Advance Planning—A. Praskac (''OTR'') RR at 1; Givens Estates, Inc. and FCA NC—E. Hillman (''Givens Estate'') RR at 1; UUFV RR at 1; Borderland, a Community Ministry in Knoxville, TN—J. Arthur (''Borderland'') RR at 1; Burmese American Buddhist Corp.—I. Timm RR at 1; Diversity Collaborative—L. Lusardo (''DC'') RR at 1; Morristown Beard School—J. Farhat (''MBS') RR at 1; Kansas City Hospice & Palliative Care—R. Valdovino RR at 1; S. Della Valle RR at 1 (funeral home owner). As one commenter said, ''[t]his is simply updating the Rule for the current age.'' Borderland RR at 1.

[28] FCA RR at 2, citing *https://www.stress.org/holmes-rahe-stress-inventory* (''The Holmes and Rahe Stress Scale, an index of stressful life events, rates the death of a spouse as the most stressful event a person will experience.''); see also TINA RR at 1 n. 2.

[29] CR RR at 1; FCA RR at 3.

[30] For example, the Funeral Consumer Alliance of Utah noted that ''[i]n hospitals, when death occurs, families are ordered to call a funeral home to come immediately. Social Workers in hospitals I've spoken to typically don't assist grieving families in price comparing. Families tell us that the Social Workers just google 'closest funeral home to [name of city]'.'' FCA UT RR at 1; see also TINA RR at 1 n. 3 (noting that a ''2007 AARP survey found that only 34 percent of those 50 years or older have 'engaged in some [funeral] preplanning.' Lona Choi-Allum, 'Funeral and Burial Planners Survey,' AARP (November 2007). Surveys by the [NFDA] found the percentage of adults of all ages who have preplanned funerals is even lower. See, *e.g.,* 'Consumer Awareness and Preferences Study,' National Funeral Directors Association (Apr. 2019), at 8.'').

[31] FCA RR at 3; see also TINA RR at 1; CC RR at 1 (''Although the funeral homes that receive ratings on our surveys are overall rated fairly highly compared to many other services we evaluate, we receive an inordinate number of complaints about high costs. A common complaint from families we survey is that they paid a lot more than they expected for their loved ones' funerals; sometimes, they report funeral directors coaxed them into spending more than they would have liked.''); J. Wilson RR at 1 (discussing how she was present while a funeral provider played on the emotions of her grieving friend to get a larger sale by saying things like ''your husband deserved better than that'').

[32] AARP RR at 2; see also MSGA RR at 1 (''[M]y experience over the past few years is that 50–75% of Funeral Homes will NOT candidly and promptly follow through on a simple request for pricing information.''). Indeed, FTC enforcement experience and has shown that some do not even comply with the current Rule's requirement to timely distribute price lists. See *FTC Releases Funeral Home Compliance Results, Offers New Business Guidance on Funeral Rule Requirements,* FTC Press Release (June 8, 2020) (FTC investigators found failures to disclose timely itemized pricing information, as required by the Funeral Rule, in 17 of the 90 funeral homes visited since 2018). In addition, the FCA and the CFA found that 28 out of 126 GPLs they examined violated the Rule because they lacked legally required consumer options or offered only packaged options. CFA RR at 8 (citing Joshua Slocum, Stephen Brobeck, The Relationship between Funeral Price Disclosure and Funeral Prices: A California Case Study, report from Consumer Federation of America/Funeral Consumers Alliance (February 2021).

[33] FCA VABR RR at 2 (20% of the homes surveyed refused to provide price information in response to a letter); FCA UT RR at 1 (''Many funeral homes that we've requested a GPL from over the phone and by email fail to send one''); CC RR at 3 (''Often, our researchers had to call several times to request [the GPL]. With many (we estimate it was about one-third of homes that didn't list GPLs online), our shoppers had to persuade funeral directors to email or fax GPLs by claiming to live out of town and therefore couldn't visit in person over the next few days. Some funeral homes—about 10 percent—refused to provide GPLs to our undercover shoppers. They required us to visit in person to learn about their prices.''); FCA CT RR at 1 (In 2019, they were only able to get a 57% response from funeral homes, after sending two letters, and working with local volunteers and members who phoned, wrote or visited those still not responding); MSGA at 1 (''Time after time I have also tried to help people who contacted a local Funeral Director to request pricing in writing and was told that it would be sent to them, but it never showed up.''); M. Klein RR at 3–4 (''Numerous funeral homes have point-blank refused to give me prices over the phone. Others did not to return phone calls within a few days, and required multiple requests. And others never responded at all. The phone requirement is hard to 'police' since it is personal communication, whereas violations of an internet requirement would be readily apparent and the rule enforceable.''); R. Alexander RR at 1 (stating that he requested pricing information using the contact form on 10 funeral homes' websites, 4 sent the requested information, 2 never responded, and the other 4 would not send the GPL but wanted to talk by phone); R. Zeldin RR at 3 (recalling that when she assisted an Arizona resident planning an out of state funeral 29% required three or more email and phone calls before sending pricing information, and 20% homes never responded; when she assisted a Pennsylvania resident, 67% ignored or refused her request for information); E. Menkin RR at 1 (when mother died, commenter had to drive to funeral homes when funeral providers refused to email or mail her a price list). Some commenters also point out that the current requirement to provide price information over the telephone when asked by callers is not the same as getting a written GPL. MSGA RR at 1 (when information is provided over the phone, there is ''no record of the conversation or proof that prices were given''); see also C. Reid RR at 2 (stating that ''[a] document with the funeral homes' letterhead and their itemized lists is far more valuable than what I heard over the phone from 'Mary Sue' who was filling in the day when I called in regarding the price lists.'').

[34] FCA WMA RR at 1 (''Almost all of the 85 funeral homes in our area (4 counties of western Massachusetts) do have websites, but very few reveal prices online. In 2016 only 1 funeral home had its GPL online. In 2018, we found 4 with prices online.''); FCA RR at 7–8 (a February 2020 survey of California funeral homes found that those that charged the highest prices were most likely to opt out of putting their pricing online); Texas Appleseed RR at 2 (''in a recent search of funeral homes in Austin, Texas, only one of the 15 homes surveyed posts their price list online''); FCA AZ RR at 1 (many funeral providers in Arizona do not post pricing information online); D. Stimpert RR at 1 (''Of the 300 or so funeral homes in Northeast Ohio, I have found only 12 that post a full General Price List (GPL) on their website.''); UUFV RR at 1 (''[T]he Dignity Memorials website for our local Visalia-based funeral home website requires a consumer to divulge one's personal email address to them in order to download a PDF document identified as a 'price guide.' Upon receipt, it turns out that this document is just an advertising brochure, not an actual price list. The only costs

Consumer Federation of America (''CFA'') and the Funeral Consumers Alliance (''FCA'') found only 16 percent of the funeral homes they surveyed posted their GPLs on their websites.[35] Consumer Checkbook similarly reported ''fewer than 25 percent—had posted their GPLs online.'' [36] Further, according to one commenter, even when pricing information is available on a website, the prices may be out of date.[37]

Commenters discussed how difficult it can be for many funeral purchasers to personally visit funeral homes to pick up price lists,[38] including emotionally distraught families,[39] families who live in different states,[40] the disabled, ill, and homebound elderly consumers,[41] those lacking access to transportation,[42] and rural consumers, who often have to drive long distances to reach the nearest funeral home.[43] One commenter reported that ''[w]hen my wife was taken to the hospital, the doctors told me she had only days to live. Turned out to be four. I shouldn't have had to choose between spending her last days with her or collecting funeral information.'' [44] Another reported that when his 4-year-old son died suddenly, he had to make arrangements quickly and transfer his son's body to a funeral home right away without knowing its prices. He said he ''had a crushing level of grief when I walked into that funeral home and I had absolutely no way to negotiate when they handed me their proposed price. How is that fair? They already had possession of my son's body, so it was not like I could walk out and begin shopping.'' [45] The pandemic has heightened such difficulties, as many people have been reluctant or unable to leave their homes to obtain itemized price lists from funeral providers.[46]

Many commenters urged the Commission to modernize the Rule to require funeral providers to post their itemized price information online because it would greatly benefit consumers shopping for funeral services.[47] Some argued online shopping is widely available now,[48] and many consumers want funeral prices to be posted online.[49] Others noted that online posting will make it easier for consumers to obtain price information and provide better opportunities for

identified in the document are framed in the phrase 'National median cost' rather than providing the specific price of the local funeral home'' and a large funeral home in area has an expensive website, but it does not disclose prices on that website); M. Bern-Klug RR at 2 (University of Iowa study found that, in 2016 study of three markets in Iowa, ''7 of the 48 funeral homes did include their GPLs on their website. We checked again the first week of June 2020 and determined an improvement: 13 funeral homes had posted their GPL (eight of the 28 funeral homes in Des Moines and five of the 23 funeral homes in the Cedar Rapids/Iowa City area)''); H. Lee RR at 3, citing Robert Benincasa, *You Could Pay Thousands Less For A Funeral Just By Crossing The Street* (Feb. 7, 2017), NPR, *https://www.npr.org/2017/02/07/504020003/a-funeral-may-cost-you-thousands-less-just-by-crossing-the-street* (last visited Apr. 16, 2020) (most funeral homes omit to post prices on websites); C. Reid RR at 3 (''In my area all the funeral homes have a website. Some share quite a bit of information except for prices. You are told to call in and stop by to pick up the price lists you want. . . . A sample [of funeral providers] showed that the city of Los Angeles, (73%), to the lowest Alameda County (27%) posted prices conspicuously. California-Funeral-Home-Pricing-Report-9–30–19docx Funeral Consumers Alliance, Inc.''); A Rector RR at 1 (only 25% of funeral homes in Maine list the GPL on their websites); J. Bates RR at 1 (of the 200 funeral retailers in the Dallas-Ft. Worth area, less than 10 post any pricing online); but see FCA UT RR at 1 (''Quite a few Utah funeral homes are now posting their prices online on their own, so it should not be a problem for the sneaky ones to do so as well.''). Additionally, on June 21, 2022, the Funeral Consumers Alliance (FCA) and Consumer Federation of America (CFA) issued a report that outlining their May 2022 survey of 1,046 funeral provider websites. The survey found that only 191 of these homes (18%) posted their price lists online. Joshua Slocum, Stephen Brobeck, Online Price Posting At More Than 1,000 Funeral Homes in 35 State Capitals (June 2022).

[35] CFA at 3–4 (citing Joshua Slocum, Stephen Brobeck, A Needle in a Haystack—Finding Funeral Prices Online in 26 State Capitals, report from Funeral Consumers Alliance/Consumer Federation of America (January 2018) (also noting that in twelve cities, no funeral providers posted their prices online).

[36] CC RR at 3.

[37] FCA WMA RR at 1.

[38] CFA RR at 3, citing James W. Gentry *et al,* ''The vulnerability of those grieving the death of a loved one: Implications for public policy,'' *Journal of Public Policy and Marketing,* v. *14, n. 1 (Spring 1999); see also, e.g., Texas Appleseed RR at 1.*

[39] AARP RR at 2; S. Henderson RR at 1 (after the sudden death of his 15 year old stepson, it was too hard for his family to visit multiple funeral providers to price shop); A. Nickerson RR at 1 (recounting her experiences in planning for the burial of a family member, a ''time of distress and grief'', and explaining that the process would have been easier if prices were available online); R. Robertson RR at 1 (describing how out of state relatives had to step in to help grief stricken niece plan a funeral); S. Alleger RR at 1 (discussing the impact on family members when they had to be physically present to discuss funeral arrangements ''while emotionally raw,'' and explaining that they agreed to charges they did not want just to get out of the situation). See also FCA CTX RR at 1 (''[E]ven when a death is expected, spouses and children are overwhelmed with shock and grief. They have a lengthy list of tasks and decisions to make without delay. Seldom do they have the time, energy, or mental clarity to call or visit more than one funeral home. If, however, price lists were available online, information about goods and services could be collected by a family member, neighbor or friend who is not emotionally distraught.'').

[40] FCA CTX RR at 1; CCC RR at 1 (''Those facing death and their out-of-town relatives planning funerals simply cannot visit several funeral homes to pick up price lists. And if they did, the likelihood of their visiting the homes offering the best value is unlikely.''); FCA AZ RR at 2 (quoting consumer having difficulty making out of state funeral arrangements, ''*I live in Florida and a Medical Examiner in Arizona just called to tell me that my nephew there died. I can't find out from the funeral homes online how much it will cost to ship his body here or have him cremated and shipped. Do you have any pricing information or how do I get it?*'') (emphasis in original); B. Girling RR at 1 (''had to make funeral arrangements for family located out of state, many funeral homes would not give prices over the phone''); L. Lew RR at 1 (recounting how, in her experience as a Veterans Hospital employee, it is so stressful for out of state families to obtain funeral price information, and noting that posting prices online would do much to ''eas[e] the emotional and financial stress involved in making needed funeral arrangements''); J. Wilson RR at 1 (describing difficulties in arranging for out-of-state funeral for his mother, and explaining that an online price list would have made things much easier); see also CFA RR at 3, citing HwaJung Choi, et al, Spatial Distance Between Parents and Adult Children in the United States (September 2018 report funded, in part, by the National Institute on Aging) (''According to data from the 2013 Panel Study of Income Dynamics, one-quarter (25%) of parents do not have an adult child living within 30 miles of them.'').

[41] See, *e.g.,* K. Dvorak RR at 1 (wheelchair bound consumer noted that online posting of prices would make it easier to find prices); M. Klein RR at 1 (stating that when he had a medical condition and could not drive and walk, he had to rely solely on the handful of GPLs posted on the internet); V. Thorp RR at 1 (as an elderly home-bound individual with an elderly home-bound spouse, she feels a ''special burden when contemplating the need to put my affairs in order''); J. Singler RR at 1 (an eighty-year old consumer with hearing issues reported that ''[d]riving some places or making several phone calls does not work for us'').

[42] M. Scrudder RR at 1; N. Leyden-Morffi RR at 6.

[43] A. Rector RR at 1 (noting that it is not uncommon for Maine residents to drive 40 miles or more to reach a funeral home, but only 25% of the funeral homes in Maine post their GPL on their website).

[44] J. Brown RR at 1.

[45] A. Drapczuk III RR at 1. Another commenter reported when his stepson died in a car accident, they only visited one funeral provider because ''the thought of having to visit more than one Funeral Home was unbearable.'' S. Henderson RR at 1.

[46] FCA NC RR at 1; FCA EMA RR at 1; PMA RR at 1; CCC RR at 1; House Committee RR at 2; TINA RR at 2 n. 12.

[47] CFA RR at 7–8; OBFP RR at 1; Imperial Caskets RR at 1; Funerea RR at 1; LRCPA RR at 1; CA RR at 2; FCA SC RR at 1; Texas Appleseed RR at 1; FCA RR at 5–9; FCA CT RR at 1; TINA RR at 2. One commenter argued that the current language of the Rule ''implicitly encourage funeral homes to exclusively use printed format, in an age where almost everything (*e.g.,* bills, receipts, invoices, bank statements, etc.) has become paperless.'' H. Lee RR at 3.

[48] CFA RR at 6, citing Nielsen Global Connected Commerce Survey, (''a large majority of consumers now use the internet as part of their online search for products, and a significant number of these online searchers compare online price'') and Janssen, Morage-Gonzalez, Wildenbeest, ''Consumer Search and Pricing Behavior in internet Markets'' (online 2009) (consumers especially compare online prices when products are relatively expensive); OTR RR at 1 (''according to 10 Online Shopping Statistics You Need to Know in 2020 (article by Maryam Mohsin on Oberlo dated 30 Oct 2019), 63% of shopping occasions begin online.'').

[49] CFA RR at 10 (a 2017 CFA-commissioned landline and cable phone survey undertaken by Opinion Research Corporation of 1,004 representative adult Americans found that 79% of respondents agreed that ''[i]f the funeral home has a website, should it also be required to make this price information available on its website?'' and only 18% disagreed).

consumers to meaningfully price shop and view the Rule's mandatory disclosures earlier in the process.[50] And some stated that online posting could lead to more price competition among funeral providers.[51]

Commenters offered various ideas for how an online price requirement should be implemented. Almost all agreed that funeral providers that maintain websites should be required to prominently and conspicuously post their price lists on their websites.[52] Supporters of this view noted that the cost to these funeral providers would be minimal.[53] Similarly, one commenter urged the Commission to mandate that if a funeral provider has a business or ''official'' account on social media services, ''they should be required to post their [p]rice list information on that social media service.'' [54]

Commenters disagreed, however, about whether funeral providers that do not maintain a website should be required to post their prices online. One commenter argued all providers should make pricing information available electronically, because setting up a website can be done with little cost.[55] Some commenters asserted funeral providers without a website should have to promptly email itemized price lists in response to consumer requests.[56] Others argued that email delivery was not an acceptable substitute, because email would often be too slow for the time sensitive decisions at issue,[57] and requiring funeral homes to respond to emails in a timely fashion could be too burdensome given that at least some homes have only a handful of employees.[58] Some commenters noted the collection of email addresses by a funeral provider could raise privacy and spam concerns.[59] Among those commenters who supported online disclosures, some also asked that the Rule be amended to contain guidelines for how online disclosure should be made,[60] such as requiring ''online GPLs be updated in a reasonable timeframe when prices change''—so consumers are not misled by out of date prices.[61]

Regardless of how the Commission might implement an online or electronic distribution requirement, commenters urged the Commission to amend the Rule to require that, no matter how a purchase is ultimately made (in person or via phone call, email, or texting, etc.), a funeral provider must provide a copy of the GPL, CPL, and OBCPL before a consumer makes any selections.[62]

B. Comments Generally Opposing Online and Electronic Disclosure

Some commenters argued the Rule should not be amended to require all funeral providers to post their itemized GPLs, CPLs, or OBCPLs online.[63] Citing

[50] TINA RR at 2; CFA RR at 2–7; AG RR at 2; see also CA RR at 2 (a February 2020 CFA-commissioned Engine Group online survey of 1,000 representative adult Americans showed that 91% would be likely to make price comparisons online if funeral homes posted their price lists on their website, and 61% would be ''very likely'' to do so).

[51] FCA EMA RR at 1. See also CC RR at 1; TINA RR at 2; Prof. J. Perloff RR at 1. Commenters argued that amending the Rule to include an online price requirement will ''[i]ncrease competition and encourage funeral homes to offer the best possible pricing, particularly [] in local markets where there are large price differences between many funeral homes.'' AARP RR at 2; see also S. Della Valle RR at 1 (funeral owner requesting online posting of GPL, CPL, and OBCPL; he states that his competitor will not hand out GPL on request, instead the competitor uses his GPL and then sets his prices accordingly); CA RR at 1; CCC RR at 1; RW Alexander RR at 3 (noting that in his area of Northern Utah, there is a 223% difference in prices for a full funeral); FCA RR at 8–9 (noting that the prices for funeral services vary widely and the price variation is not due to differences in quality ''because prices vary even for cremations and direct burials, which involve generally the same service.'' Instead, ''the problem is that Providers know that most families are not aware of this huge price variation. . . So, even a very high price is categorized in the consumer's mind as 'normal, and just what funerals or cremations cost'''); CC RR at 4 (''We also find that [funeral home] prices are not related to service quality. Funeral homes that receive high marks from their surveyed customers for service quality are actually slightly *less likely* to charge high prices compared to funeral homes that receive low scores from their surveyed customers.'') (emphasis in original).

Commenters also cited to a recent study that found that funeral providers in California who voluntarily disclose their prices on their websites charged consumers lower rates. FCA RR at 7–8 citing Joshua Slocum and Stephen Brobeck, The Relationship between Funeral Price Disclosures and Funeral Prices: A California Case Study—February 2020. Accessed at: *https://funerals.org/wpcontent/uploads/2020/02/California-Funeral-Home-Pricing-Report-2-10-20.docx* (noting that ''[p]rice-hiders charged a median price 31 percent higher for a direct cremation ($1,695) than those who prominently disclosed their prices online ($1,295), Price-hiders charged a median price 37 percent higher for an immediate burial ($2,595) than prominent disclosers ($1,900), and Price-hiders charged a median price 36 percent higher for the basic services of funeral director and staff ($1,835) than prominent disclosers ($1,348)'').

[52] See, *e.g.,* UUFV RR at 1; FCA RR at 9; AG RR at 2–3; CA RR at 1; CR RR at 2. One commenter stated that funeral providers should only have to post a GPL online, and not the OBCPL and CPL. D. Stahlhut RR at 1.

[53] FCA RR at 5; AG RR at 2–3; CA RR at 1; CR RR at 2; CFA RR at 10; FCA AZ RR at 2–3; MSGA RR at 1; UUFV RR at 1; see also C. Tregillus RR at 2 (''With computers and printers/copiers now essential to all businesses, the costs of preparing, revising, and printing the required disclosures are negligible, even for small, low-volume funeral home businesses. Although some funeral providers, of course, may elect to spend more than the Rule requires on their price lists by, for example, sending them out for professional multi-color printing, the prices they choose to pay for such services are not required by the Rule, and thus are not real compliance costs. Any claims about the high cost of compliance would likely reflect such costs that are not required by the Rule.''). Indeed, some argued that online pricing may save funeral providers money, as they will save on printing and staff costs, and electronic files can be changed quicker and easier than print files. FCA RR at 5; FCA VABR RR at 2.

[54] UUFV RR at 2.

[55] AARP RR at 2. But see K. Kaczmarek RR at 3, citing *How Much Should a website Cost?*, WebFX (2020) (setting up a website can cost thousands of dollars). One commenter asked that funeral providers in parts of the country with no or limited internet should be exempted from any online disclosure requirements. FCA VABR RR at 3–4.

[56] CR RR at 2; see also MSGA RR at 1 (sending pricing info via email should be ''a very simple thing''); R. Zeldin RR at 1 (information must be emailed within 24 hours of receiving the request); M. Ludlum RR at 3 (noting that websites should not be mandatory now, but that he anticipates that all funeral providers will have a website in the next few years because ''of the many benefits of having a funeral home website''). One commenter also suggested that the Rule be updated to require ''providers responding to telephone requests for price lists [to] give consumers the option of receiving emailed electronic copies, and otherwise provide the GPL's required affirmative disclosures orally.'' C. Tregillus RR at 3.

[57] C. Tregillus RR at 7 (requiring consumers to request emailed prices will ''cause at least some delay'' which may ''prevent consideration of the information'' particularly where ''consumers may feel under pressure to make rapid arrangements''); see also FCA AZ RR at 3; M. Klein RR at 4. One commenter argued that funeral providers should be given 48 hours to respond to any emailed request for price lists, given that the email could be sent over a weekend or late at night. D. Stahlhut RR at 1.

[58] RW Alexander RR at 7 (website disclosures would be less burdensome to small businesses that requiring them to respond to email).

[59] UUFV RR at 1 (some of its members have reported receiving ''spam'' email and phone calls from funeral providers); R. Doremus RR at 1 (consumer was contacted by a funeral home for six months after providing her information); CFA RR at 3 (some funeral providers use provided contact information to ''aggressively market their services, including repeated calls'').

[60] For example, some suggested that the FTC consider requirements for language, type size, and placement in any required online disclosures, as well as requirements that the posting be conspicuous and easy to see, and that the GPL or a link to the GPL be visible on the landing page of the funeral home's website. CFA RR at 10; FCA MN RR at 1; M. Ludlum RR at 4–5; RW Alex RR at 16.

[61] FCA WMA RR at 1. One commenter advocated instead that funeral providers only be allowed update their prices once a year, on 60–90 days' notice to consumers. N. Finkle RR at 1.

[62] FCA AZ RR at 3. Several attorney generals argued that if the arrangements are made without an in-person meeting, then the ''funeral provider should be required to provide electronic copies of its itemized GPL, CPL, or OBCPL prior to the consumer making any selections'' and ''post all prices on their websites.'' AG RR at 3. Another commenter stated that ''digital delivery of [GPL, CPL, and/or OBCPL] should constitute 'physical delivery,''' but the burden will be on the provider to prove, ''through technological means such as digital footprint tracking and other such methods, that a consumer has reviewed and received the'' price list. HLC RR at 1.

[63] SCI RR at 3, 16; Funeralocity RR at 1–2; NYSFDA at 3; CANA RR at 2; SIFH RR at 11–12; ICCFA RR at 9–26; NFDA RR at 44–52; Carriage RR at 2. See also the almost identical comments submitted by the Kentucky, South Dakota, Utah, Iowa, Michigan, and Rhode Island Funeral Directors Associations, the New Hampshire Funeral Director and Embalmer Association, the Hawaii Funeral &

industry surveys, they argued consumers are not currently being harmed by not having funeral prices online, so a Rule amendment would not be appropriate.[64] They argued the current Rule ''provides consumers with complete and accurate pricing information that they can digest and utilize to develop funeral arrangements that meet their unique needs and circumstances'' [65] and ''[i]f a consumer does not want to step inside a funeral home . . ., they do not have to do so and are free to shop over the telephone or by visiting a funeral home and taking its price list with them when they leave.'' [66] Some of these commenters stated many funeral providers already post price information online (although no commenters provided data about what price information is available or how widespread the practice is),[67] and, they point to third-party online services that collate funeral price information and offer it to the public.[68]

Some commenters argued most consumers are satisfied with the current status quo [69] and the market should dictate whether funeral homes make prices available online.[70] Some of these commenters stated that, unlike many products, consumers consider more than price when purchasing funeral services,[71] and visiting funeral homes is beneficial to consumers.[72]

Some critics of an online disclosure requirement argued such a requirement would be burdensome to funeral providers, including small businesses who ''lack[] the budget, expertise, and staff to create and maintain a website,'' [73] although they did not quantify this burden or offer evidence to support their position. They further argued the proposed requirement is especially problematic for rural funeral homes, because many do not have a website due to lack of local technology infrastructure.[74] Some commenters argued mandating website price disclosures would put small business at a competitive disadvantage [75] and potentially cause them to be subject to unaffordable penalties for law violations.[76] They argued funeral homes are already subject to state regulation, and adding an additional layer of regulation (which, they argued, might conflict with state laws) ''is not only unnecessary but will create confusion.'' [77]

Some commenters argued a requirement to post prices online would be unfair since no other industry is mandated by federal law to post prices online, except for a ''new Department of Health and Human Services regulation which mandates that hospitals post prices for certain procedures online.'' [78]

Cemetery Association, and the Arizona Funeral Cemetery & Cremation Association (the ''State FDAs.'') The Indiana Funeral Directors Association reports that 80.5% of 144 licensed funeral providers in Indiana feel website/virtual inclusion should not be mandated in the Rule. Indiana Funeral Directors Association (''IFDA'') RR at 3.

[64] NFDA RR at 44–45 (NFDA's Consumer Survey found that ''slightly over 90% of consumers do not even look for price information when selecting a funeral home. Secondly, of those who do seek out price information, 65.4% do it by visiting the funeral home and 24.8% by telephoning the funeral home''); see id. at 48 (''Given the fact that less than 10% of funeral consumers seek price information before selecting a funeral home and that an overwhelming majority of those 10% prefer to visit the funeral home (65.4%) or telephone the funeral home (24.6%), there is scant reason to believe that requiring all funeral homes to post price lists would benefit any consumers. However, to require the nation's 20,000 funeral homes to post all their price lists on their websites and to add updates thereto would involve substantial initial and ongoing costs.''); Funeralocity at 1 (''We do not see a transparency problem in funeral provider prices. As the NFDA 2019 consumer survey shows, in 83.2% of the time, families call only one funeral home in their times of need. And they can get the prices in that call—even in a grief-stricken state. We see no reason to change the Funeral Rule regarding GPL disclosure. There is no problem to remedy''); ICCFA RR at 10 (noting that only one commenter said pricing information was unavailable).

[65] SCI RR at 16. See also NFDA RR 48 (''Even for the less than 1% of funeral consumers who do use the internet to price shop, there is no evidence that they have any problem accessing funeral price information on the internet. As NFDA's Funeral Consumer Survey evidence showed, of the small minority of consumers who do price comparison shop, over 87% of them reported it was very easy, easy, or somewhat easy to obtain the price information they wanted.'')

[66] Carriage RR at 3. But see discussion infra footnotes 29–30, 37–42 regarding reported difficulties with getting price lists or with visiting a funeral home.

[67] New Jersey Funeral Directors Association (''NJSFDA'') RR at 4 (''Many NJSFDA funeral providers voluntarily make GPLs available on their websites. Others utilize and subscribe to Funeral Matters. . . . Funeral Matters is a contemporary and transparent online pricing tool that allows consumers the ability to price and compare accurate charges with information available on the websites of 26 subscribing funeral providers. . . . In 2019, an average of 1,700 unique consumers performed pricing research on the subscribing funeral providers' websites each month, representing 27.5% of the funerals performed every month in NJ (74,159 deaths/12 months = an average of 6,180 deaths each month.).''); NYS FDA RR at 3 (''While empirical data show that this medium still lags as a tool for consumers in seeking out funeral pricing information, it is a fact that a growing number of funeral homes continue to choose to voluntarily place their price lists on their websites''); ICCFA RR at 10, citing FuneralOne, *https://www.funeralone.com* (last visited June 9, 2020); Consolidated Funeral Services, *https://runcfs.com* (last visited June 9, 2020); and Frazer Consultants, *https://www.frazerconsultants.com* (last visited June 9, 2020).

[68] ICCFA at 11; see also NFDA RR at 50. One service, Funeralocity, commented stating that it ''spend[s] many thousands of dollars obtaining and updating GPLs every year. If prices were available online, we would save a lot of money. But we would lose some of the uniqueness that we offer in displaying the prices of virtually every funeral provider in the US online. . . We are updating prices constantly . . .. While our updating process cannot be done in real time with the GPL changes at each individual provider, we are very accurate. And when we are not, the price is only off slightly. The packages we create are for sampling the provider's prices and the pricing profiles are still valid especially when comparing to a competitor funeral home's pricing.'' Funeralocity RR at 2. But one commenter noted, however, that this information, while well-intended, quickly becomes ''outdated and inaccurate (at no fault of each funeral provider) and often results in consumer/funeral provider conflict.'' NJSFDA RR at 3.

[69] NFDA RR at 46 (NFDA's 2019 and 2020 funeral surveys showed that 19.54% of consumers found it to be very easy to obtain price information, 34.9% found it to be easy, 32.75% found it to be somewhat easy, 10.85% said it was not very easy, and 2.05% said it was not easy at all); SCI RR at 2, 8, 9 (summarizing results of a JD Power's survey).

[70] NFDA RR at 49; CANA RR at 2; Carriage RR at 2–3; State Directors FDA RR at 1 (''Additionally, our member funeral homes know very well the clientele they serve. If families want price information posted on the funeral home's website, the funeral home will post it.''); ICCFA RR at 10, 20–21 (''Having that choice allows the funeral home to present and inform the consumer in the manner that is fair to the consumer and most appropriate for the business. If the Funeral Rule were to mandate that all prices must be made available online through a funeral home website, it takes away the business' right to choose where it conducts business.'').

[71] NFDA RR at 10–11, 49. As one funeral provider said, ''Price simply does not tell the story'' of what a consumer is buying when it comes to funeral service arrangements—''the 'look and feel' of the facilities matter.'' SCI RR at 13–14.

[72] NYSFDA RR at 3 (''Indeed, there is also infinite value for a consumer to speak with a funeral director, preferably in person, so as to better understand his or her funeral home's specific offerings and to review and explain price lists and the various options that are available. Consumers are best served when they can factor into their decisions both price AND service.'').

[73] SIFH RR at 11–12; see also ICCFA RR at 21 (''Many funeral homes are small facilities that have limited resources and limited access to technology. Having to modify a website; keep it current; and also make it consumer-friendly, are things small providers may not be able to do.''); Funeralocity RR at 2 (''In our opinion, funeral directors are not typically tech savvy, so these changes will have to be implemented by outside resources.'').

[74] IFDA RR at 3–4 (adding that some providers use social media or instant messaging rather than having a website).

[75] ICCFA RR at 21 (''Potentially, larger or more tech-savvy providers could dominate on the pricing presentation and consumers could be misled thinking that these were better providers—merely because now, potentially, all shopping would be done online.'').

[76] ICCFA RR at 24. The ICCFA was also concerned about costs to educate funeral homes concerning the rule changes, including the costs to mortuary schools which will have to update references, books and materials on the current Funeral Rule and to states which would have to update its testing materials. Id.

[77] Carriage RR at 3; see also SCI RR at 15–16. But see OTR RR at 1 (noting that Texas exercises minimal oversight over the funeral industry).

[78] NFDA RR at 47; State FDAs RR at 1. See also ICCFA RR at 20 (''[o]ther industries regulated on the Federal level have disclosure requirements, which each provide a trigger point, but none are promulgated solely upon the existence of a website. . . For example, U.S. air carriers must

Continued

One commenter argued that ''[g]iven the rapid pace of technologic change, in another decade the online world will likely look just as different. . . . Many funeral homes are engaging with the public on social media platforms, such as Facebook, Twitter, and Instagram. These website alternatives do not lend themselves well to posting a GPL.'' [79] Another commenter argued requiring only funeral providers that maintain a website to post a GPL online, ''could lead to some funeral homes removing their websites in order to avoid the requirement.'' [80]

Some commenters who argued against requiring all funeral providers to provide electronic or online delivery of itemized price lists, did support more limited modifications to the Rule. First, several commenters opined all funeral providers that offer consumers the option to make funeral arrangements online must post an itemized price list online, so consumers can review this price information before making a purchase.[81] As one commenter said, ''[c]onsumers who choose to shop online deserve the same protections as those who arrange a funeral or cremation in person—and certainly deserve to receive itemized pricing information 'prior to any selection or determination' of funeral goods and services.'' [82] Second, the National Funeral Directors Association (''NFDA'') proposed the Rule be updated to include ''permissible options'' to transmit GPLs to consumer via new ''information distribution systems'' that have emerged since the Rule was enacted—''including personal delivery, U.S. Mail, electronic mail, telefax, or by posting a link to its GPL on the funeral home web page with the word[s] 'price information.' '' [83] Third, one commenter asserted the Commission should offer a safe harbor from undercover shopping [84] for funeral providers that make GPLs available on a conspicuous place on their websites.[85]

2. Commission Staff Review of Funeral Provider websites

Commission staff conducted a review of almost 200 funeral provider websites from a cross-section of geographical areas and sizes.[86] As described below, the review showed robust website use by those funeral providers to promote their goods and services. Yet, most websites did not provide any pricing information. Fewer than half (40%) of the sites reviewed provided any information about the price of the goods or services offered.[87] Only about 24% of the websites contained an itemized price list or GPL and just over 10% displayed only starting prices or package prices.[88] Moreover, of the websites that contained pricing information, only some prominently displayed the GPLs or other price information on their website's home page or on the drop-down menus present on that page.[89]

Staff's review found funeral providers were using websites for many aspects of their business.[90] For example, almost all of the reviewed websites posted obituary information about the deceased persons in their care, as well as information about any related funeral, graveside, or memorial services. These websites provided dedicated pages for each of the deceased persons in their care, many of which could be shared electronically with others. The web pages also offered visitors the opportunity to post condolences for the family and others to see on the website and many offered ways to send flowers to the families of the deceased.

Two-thirds of the websites reviewed listed an email address to contact the provider and almost all offered online forms web visitors could submit to contact the funeral providers.[91] A handful appeared to offer visitors the ability to chat online with the funeral provider, and almost 10% of the reviewed websites appeared to offer visitors the ability to make online selections of their funeral arrangements on the providers' websites, without visiting the physical location.[92] Almost 80% of the websites indicated an association with a third party company to create, design, or host the funeral providers' websites.[93]

3. Objectives and Alternatives

The record shows funeral providers typically use websites and electronic communication to communicate with the public about a variety of information, ranging from their contact information, obituaries, information about any funeral, graveside, or memorial services, pictures of caskets, and descriptions of the services they offer. Most, however, appear not to use such technology to share their prices with consumers. The record also shows that, given the growth of the internet and electronic communication, adding electronic media as means to display and distribute price information would greatly benefit consumers by providing access to accurate itemized prices with arguably minimal costs to funeral providers who already have websites. Such an amendment appears to fit squarely with the original purpose of the Rule and will make the Rule more in tune with how consumers generally obtain price information today. Therefore, the Commission wishes to explore how it could revise the Rule's preventative requirements regarding the distribution of price information to include new technologies. The Commission is particularly interested in suggestions about how to tailor changes in ways that facilitate the ability of small businesses to comply with the Rule using new technologies.

disclose various fee information, including baggage fees, to consumers. However, the disclosure is only required upon the 'website of U.S. air carriers that have *a website accessible for ticket purchase* by the general public'. . . Similarly, a depository institution must provide certain account disclosures to consumers before an account is opened. If the account is opened through electronic means, such as through a website, ''the disclosures required . . . must be provided *before the account is opened or the service is provided*.'' Again, the notice is not deemed to be necessary simply because the bank has a website—but is tied to the creation of an account, and further tied to the time period right before the service is provided.'') (emphasis in original) (internal cites omitted).

[79] SIFH RR at 11.

[80] ICCFA RR at 21.

[81] ICCFA RR at 19; NFDA RR at 40; NYSFDA RR at 4; SIFH RR at 9, 11, 12; CANA RR at 2.

[82] SIFH RR at 12.

[83] NFDA RR at 40. The Indiana Funeral Director's Association noted that 71.5% of the respondents in a recent survey ''felt the mandatory inclusion of requiring funeral homes to fax, email, mail GPLs when requested did not further protect the consumer, and increased the potential cost confusion if a face-to-face requirement to obtain a GPL were made optional.'' IFDA RR at 4.

[84] Commission staff has historically conducted such shopping as part of its efforts to ensure compliance with the Rule.

[85] NJSFDA RR at 4 (FTC undercover price shoppers should not target funeral providers who have GPLs conspicuously disclosed on the website); NYSFDA RR at 3–4 (suggesting that instead of changing the Rule, the FTC encourage providers to post their GPLs online by providing a 'safe harbor' from undercover shopping for such providers since the GPLs are available at any time). One consumer suggested that the Rule should allow providers who choose to post price information online to include a ''waiver in the contract for services stating that the consumer has seen all of the required disclosures online and has waived their right to receive them in person.'' L. Northcutt RR at 2. The NYSFDA also asked that the FTC allow ''adequate time'' of one year before implementing any website disclosures, to give the industry time to comply. NYSFDA RR at 3–4.

[86] Shopping for Funeral Services Online: An FTC Staff Review of Funeral Provider websites (Oct. 2022) (''Report''). The full Report is available at *https://www.ftc.gov/reports/shopping-funeral-services-online.* While not based on a statistical sample, the review looked at a diverse group of funeral providers that are employing websites in their businesses. The results offer broad insights into the information providers of differing sizes and in areas with different population densities make available online.

[87] Report at 5.

[88] Id. at 5–6.

[89] Id. at 6.

[90] Id. at 4–5.

[91] Id. at 4.

[92] Id. at 4.

[93] Id. at 9.

First, the Commission seeks comment on whether it should change the Rule's price list disclosure provisions to require funeral providers to prominently display either their GPLs or a prominently labeled link to their GPLs on their websites. The Commission is particularly interested in whether such a provision should apply to all funeral providers, all providers with a website, or only providers who sell funeral goods or services online.

Second, the Commission seeks comment on whether it should change the Rule's CPL and OBCPL distribution requirements to require funeral providers to prominently display either their CPLs and/or OBCPLs on their websites, or a clearly labeled link to these price lists.[94] The current Rule requires funeral providers to present their CPLs and OBCPLs before discussing or showing these items or pictures of these items.[95] This possible modification could apply to all providers, or just those providers who show pictures and/or descriptions of caskets, alternative containers, or outer burial containers.

Third, the Commission could consider a Rule change to require all funeral providers that maintain websites to display a prominent statement that users can request the providers' GPLs, CPLs, and OBCPLs with a link, button, or email address for people to use to request the price list or lists.[96] The Commission also seeks comment on whether to include a requirement that funeral providers must respond to online requests for price lists within a particular time frame. The Commission notes the current Rule does not require the CPL or OBCPL to be in a specific format, stating ''[i]n lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner.'' [97] Commission staff have seen CPLs and OBCPLs in the form of binders, catalogs, and brochures in addition to written lists. Thus, the Commission seeks input as to whether a requirement that the CPL and/or OBCPL be in a format that can be shared electronically provides any benefits to consumers or presents any challenges or costs for compliance, particularly for small business.

Fourth, the Commission is also considering whether to include social media pages or other new technological or electronic communication methods within the scope of covered websites for the purposes of any Rule modifications. For example, the Commission could require a funeral provider with a social media page to link to the provider's main website or provide an email address or other online mechanism for a user to request price list information. On a related note, the Commission seeks input on ways to amend the Rule to embrace new platforms and technologies as they develop so that both providers and consumers can benefit from new distribution methods without requiring a Rule change.

Fifth, the Commission seeks comment on whether the Rule should be modified to require all funeral providers (regardless of whether they maintain websites) to offer to send their GPLs, CPLs, or OBCPLs electronically to any persons who ask about the providers' goods and services, including those who ask for a copy of any of its price lists. This could include requests by telephone, text, email, weblink, social media, fax, U.S. Mail, or other new communication methods that may emerge in the futures. Providers would be required to send the information within a certain timeframe, unless the consumer declines to receive this information or does not provide an email address or other method for receiving the information. The Commission could also make an exception to this proposed requirement if a funeral provider prominently makes either its GPL, CPL, and OBCPL, or clearly labeled links to these documents, available on its website.[98]

Sixth, another approach the Commission is considering would require all funeral providers to give electronic copies of their GPLs at the beginning of any arrangement discussion or process that does not take place in-person unless a hard copy has already been provided. For example, if the arrangements are discussed on the telephone, the provider would need to send an electronic copy of the GPL to the consumer before continuing the conversation (if the consumer has not yet received the information). If the consumer is making selections online, the provider would need to offer a prominent link to its GPL before allowing the consumer to proceed with selections. Electronic copies of the CPLs and OBCPLs would also need to be provided if showing or discussing those items or their prices, or if consumers are making selections of those items online.

Seventh, if electronic distribution is required, the Commission is considering whether the Rule should include a requirement concerning how often providers should update the electronic GPLs, CPLs, and OBCPLs. The current Rule requires a funeral provider to list an effective date on its price lists. To be in compliance with the Rule, the price list must be accurate. Therefore, funeral providers must update their lists regularly as their prices change. The costs to businesses of updating electronic lists would seem quite minimal and further the goal of providing consumers with accurate itemized information. Should the Commission set a specific time frame for updating online information?

Eighth, the Commission is considering another potential modification to the Rule's preventative requirements to include electronic means for distribution of the statement of funeral goods and services selected. Currently, the Rule requires funeral providers to give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements.[99] When the arrangements discussions take place in person, the statement is provided at the end of the meeting. When consumers make arrangements via the telephone or online, the funeral provider could be required to immediately send an electronic copy of the statement of goods and services selected, rather than giving the list to consumers in a less timely way, for example by sending the statement via U.S. Mail. Electronic distribution of the statement could provide tremendous benefits to consumers by providing more timely access to the total cost of funeral

[94] The Rule currently requires funeral providers to either include the information contained in their CPLs or OBCPLs on their GPLs, or list the price ranges for caskets, alternative containers, and outer burial containers on their GPLs. 16 CFR 453.2(b)(4)(iii). Thus, this provision would only be necessary for those providers that only include the price ranges for caskets, alternative containers, and outer burial containers on their GPL.

[95] 16 CFR§ 453.2(b)(2)(i) and 453.2(b)(3)(i).

[96] Funeral providers could also be required to state on the GPL that the CPL and OBCPL are available upon request via one of these electronic methods.

[97] 16 CFR 453.2(b)(2)(i).

[98] Funeral providers would still be required to answer questions of persons who ask over the telephone about the providers' offerings or prices. Note that the change considered would not require a funeral provider to affirmatively send or offer to send price list information electronically unless a person first asks about its offerings or prices. This approach is consistent with the Commission's prior decision to repeal the original Rule's requirement that providers affirmatively state price information over the telephone even when a caller did not ask for the information. See 1994 Statement of Basis and Purpose, 59 FR 1592, 1600–1602 (Jan. 11, 1994).

[99] 16 CFR 453.2(b)(5).

arrangements and appears to present minimal costs to providers.

B. Disclosure of Crematory Fees and Other Costs

The Review also elicited comment about whether to require funeral providers to disclose on their GPLs information about all crematory-related fees, including third party fees, and other costs, such as fees for death certificates and local permits. The Rule currently requires funeral providers to list the prices for 16 items (if offered), including the prices for the direct cremation services offered, with separate prices for direct cremation with or without an alternative container, and a description of the services and container included in each price.[100] A funeral provider may include the use of its crematory or a third party's crematory in its GPL's description of the services and costs for direct cremation services. Funeral providers who do not operate their own crematories and have not included the cremation fees in the price for direct cremation on the GPL must list the fees charged by an outside crematory, or a good-faith estimate of those fees, along with additional crematory-related fees as ''cash advance'' services in the statement of goods and services selected.[101]

1. Summary of Comments

Several commenters asked that the Rule be changed to require funeral providers to disclose all crematory fees on the GPL, including third party crematory fees, as well as any additional crematory-related fees such as crematory transportation fees.[102] These commenters argued it is deceptive not to include these additional fees on the GPL when listing the price for cremation services.[103] They asserted a reasonable consumer would expect a fee for ''cremation services'' reflects the full cost of the cremation, even if it is performed by a third party crematory,[104] and may not learn until it is time to pay the bill they also have to pay additional third party crematory fees.[105]

According to these commenters, while most funeral homes appear to voluntarily disclose all third party crematory fees on their GPL, a substantial minority do not.[106] For example, a 2016 survey by the FCA and CFA of 142 representative funeral homes nationwide found 22 percent did not disclose third party crematory fees on the GPL.[107] Consumer Checkbook found 40 percent of ''funeral homes don't disclose crematory fees on their GPLs, or even note that such a fee might exist.'' [108] Commenters reported third party crematory fees can range from $250 to $600.[109]

Several commenters said requiring third party crematory fees to be included on the GPL would ''help[] ensure that consumers have accurate pricing information,'' and ''create a fairer 'playing field' for all funeral homes.'' [110] Some asked that the Rule be amended to mandate the full disclosure of all crematory fees.[111] Others felt funeral homes who use a variety of third parties should only have to disclose a price range,[112] and some suggested a disclaimer that a crematory fee is not included is one option to avoid harm to consumers.[113]

Some commenters were opposed to amending the GPL requirement to require the disclosure of third party crematory fees on the GPL.[114] Some contended that over 70% of funeral providers use a third party crematory to perform their cremations,[115] and these funeral providers have no control over the amount charged by third party crematories.[116] Some commenters reported many funeral providers work with multiple crematories that charge different fees,[117] and it would be unduly burdensome to require providers to constantly monitor all of these fees charged by separate businesses, and then update and re-print the GPL each time the third party fees changes.[118]

2. Objectives and Alternatives

The Commission is considering whether to amend the Rule to provide better disclosure for consumers about

[100] 16 CFR 453.2(b)(4).

[101] *Complying with the Funeral Rule,* FTC Business Compliance Guide *available at https://www.ftc.gov/system/files/documents/plain-language/565a-complying-with-funeral-rule_2020_march_508.pdf.*

[102] CFA RR at 10–11; LRCPA RR at 1; FCA VABR RR at 1, 3; FCA GKC RR at 1; FCA PA RR at 1; FCA GR RR at 1; FCA SC RR at 1; FCA RR at 9–10; CR RR at 3; FCA AZ RR at 3–4; FCA MN RR at 1; FCA CT RR at 2; TINA RR at 3–4; Paige Hetherington, GraceFull Dying RR at 1; MBS RR at 1; C. Tregillus RR at 9–10; Imperial Caskets RR at 1; Charter Funerals RR at 1; Diversity Collaborative RR at 1; Borderland RR at 2; SIFH RR at 12; AARP RR at 3; M. Klein RR at 6–7. Some commenters complained that funeral providers do not always disclose all of their own fees or third party fees on the GPL. See, *e.g.,* AG RR at 4 (noting that some funeral providers list a fee for the death certificate in the GPL, but others do not, and ''it can be upsetting for consumers to be asked to pay additional amounts they are not aware of''); FCA CT at 2 (stating that some funeral homes omitted required items and idiosyncratic fees from the GPL, including the price of the container, the mandatory Medical Transportation Fee, and unlisted transportation fees).

[103] FCA of VABR RR at 3; CMS RR at 1; FCA RR at 9–10; SIFH RR at 12.

[104] FCA PA RR at 1 (''No normal person would ever think that the advertised price of a cremation does not include the actual crematory fee(s)...''); FCA RR at 9–10.

[105] FCA RR at 9–10.

[106] CFA RR at 10–11; see also SIFH RR at 12 (Many online only providers ''advertise a very low price for a ''direct cremation,'' but then charge the consumer a number of add-on fees that substantially raise the actual price of the service''); FCA CT RR at 2 (2019 survey found that some funeral homes and many cremation providers which touted ''inexpensive cremation'' failed to include the price of the container, the required Medical Examiner's charge, or an unlisted transportation fee to the ME's or the crematory to pack up the ashes); FCA WMA RR at 1 (reporting that consumers are surprised to discover that the GPL cremation fee does not include the actual cremation or the required $200 medical examiner fee).

[107] FCA RR at 9–10, citing Joshua Slocum, Stephen Brobeck, ''Cremation Services: Highly Variable and Misleading Pricing, Lack of Disclosure, and Violation of Federal Rules,'' Funeral Consumers Alliance and Consumer Federation of America (September 2016), at 3, *https://funerals.org/wp-content/uploads/2020/02/2016-9-12-FCA-CFA-Cremation-Report.pdf;* see also CFA RR at 10–11.

[108] CC RR at 4.

[109] TINA RR at 3–4 citing Joshua Slocum, Stephen Brobeck, ''Cremation Services: Highly Variable and Misleading Pricing, Lack of Disclosure, and Violation of Federal Rules,'' Funeral Consumers Alliance and Consumer Federation of America (September 2016), at 3, *https://funerals.org/wp-content/uploads/2020/02/2016-9-12-FCA-CFA-Cremation-Report.pdf.* See also CFA RR at 10–11; FCA RR at 9–10.

[110] CFA RR at 10–11 (stating ''those that do not disclose have an unfair advantage over those that do'').

[111] CR RR at 3 (''The price list should be required to include any products and services to be obtained from third parties and treated as 'cash advance' items by the funeral home. It should include crematory fees, and other fees and charges of whatever kind that the consumer would pay to the funeral home. . .''); FCA GKC RR at 1; AARP RR at 3; SIFH RR at 12; C. Tregillus RR at 10.

[112] TINA RR at 3–4; FCA RR at 10. But see C. Tregillus RR at 9–10 (a price range would not be helpful as it would create unnecessary confusion for consumers).

[113] FCA PA RR at 1. See also FCA VABR RR at 3 (the Rule could either require the third party crematory to be included on the GPL or it could require a disclaimer identifying the crematory provider who will be charging an additional fee). But see FCA AZ RR at 3–4 (providing real-life examples of disclosures that would not be helpful; such as price lists that contained ''low-ball pricing'' that is not reflective of what consumers will have to pay, that included only a ''fine print'' disclosure that crematory or medical examiner fees are not included in that pricing). Consumer Reports asked that the GPL ''include any products and services to be obtained from third parties and treated as 'cash advance' items by the funeral home. . ., [including] fees and charges of whatever kind that the consumer would pay to the funeral home.'' CR RR at 3; see also FCA VABR RR at 3 (the newspaper obituary fee should be listed in the GPL).

[114] NFDA RR at 60–61; NJSFDA RR at 5; NYSFDA RR at 4–5.

[115] NFDA RR at 60 (''According to the 2019 NFDA Member General Price List Study, over 70% of funeral homes use a third-party crematory to perform their cremations.'').

[116] Id.; NJSFDA RR at 5; NYSFDA RR at 4–5.

[117] NFDA RR at 60.

[118] NJSFDA RR at 5; NYSFDA RR at 4–5.

third-party crematory-related fees, as well as other costs not required to be listed on the GPL. The Commission seeks comment on a whether funeral providers should be required to list any applicable third-party crematory fees on the GPL in close proximity to the description and price for direct cremation. Another approach would be to require a funeral provider that does not include the cost of the third-party crematory fees in the price for direct cremation to include a statement on the GPL that the cremation fee does not include third party crematory fees, along with a typical price range for these fees. Such a statement would need to be placed in close proximity to the price for cremation.

In addition to third-party crematory fees, the Commission wishes to explore whether the Rule should be clarified to state when other fees, not included in the price of the services, should be disclosed on the GPL.[119] For example, these other fees may include separate charges for the weight of the deceased, removal of a medical device, storing remains, expedited cremation or burial, death certificates, county permits, medical examiner permits, and supplies and procedures related to infectious disease control. The Commission seeks comment on whether these or other costs related to direct cremations or immediate burials not included in the price of those services should be added to the items required to be disclosed on the GPL, and whether such items should appear in close proximity to the price for direct cremations and immediate burials. Another approach to address concerns about other costs not currently required to be listed on the GPL would require a funeral provider to include on the GPL a statement in close proximity to the price for direct cremation that lists the additional fees the funeral home knows consumers may have to pay, along with a typical price range for those fees. Alternatively, funeral providers could be required to include a statement in close proximity to the prices for direct cremation and immediate burial simply stating additional fees may apply.

C. Reduced Basic Services Fee

The Rule currently allows funeral providers to charge only one non-declinable fee, for the ''services of the funeral director and staff'' (or ''the basic services fee'').[120] This fee ''grew out of the Rule's unbundling provisions, which required funeral providers to itemize prices. These unbundling requirements meant funeral providers could no longer sweep into the price of a funeral package their fee for the basic services they perform in connection with planning a funeral.'' [121] In recognition that ''irrespective of the combination of goods or services [a consumer selects], the very process of selection itself will involve use of the funeral provider's services,'' the Commission permitted funeral providers to charge a basic services fee.[122] The Commission intended, however, that this fee should include only the charges for a funeral provider's basic services associated with arranging and planning a funeral (and a portion of overhead, if the provider chooses to include it), and not the services associated with providing the other 16 declinable items for which itemization is required on the GPL.[123]

In the 2008 Rule Review, divided commenters asked the Commission to consider eliminating the fee entirely or reformulating it. The Commission declined to do so, stating as follows:

> The purpose of the Rule is not to regulate prices. . . . Regardless of the particular funeral arrangements a consumer seeks, there are a number of fixed costs related to funeral arrangements for which funeral providers are entitled to seek payment when their services and facilities are used. Prior to the adoption of the Rule, all costs were bundled into one package, none of which consumers could decline. By allowing a basic services fee, the Rule ensures that consumers get the benefit of choosing goods and services among a variety of options—including the option to purchase goods from the funeral provider's competitors—and paying for common costs only once.[124]

The current Rule Review solicited comment on whether to change the Rule's requirement that funeral providers can charge only one basic services fee in most instances, and whether two of the exceptions to the basic services fee provision should be amended to permit some common limited additional services without the funeral provider having to charge its full basic services fee.

1. Summary of Comments

Commenters again were divided on whether the Commission should eliminate or reformulate the basic services fee or maintain the status quo.

Some favored eliminating the fee.[125] They said the basic services fee, which has no cap and is charged by almost all funeral homes, confuses consumers.[126] Moreover, to these commenters, the basic services fee can be exorbitant.[127]

The House Committee of Energy and Commerce said if the Commission determines a non-declinable basic services fee is necessary, then consumers should be made aware of what they are being charged for, by requiring funeral providers ''to provide detailed descriptions'' of the fee, including the total amount and what services are covered by it.[128] It also asked the Commission to cap the basic services fees.[129]

Several industry groups and State Attorneys General argued funeral providers should be permitted to charge a variable fee, based on the service provided,[130] or a reduced service fee for consumers requesting a limited viewing or visitation.[131] To these commenters, the funeral landscape has changed where, funeral providers ''offer a wide variety of different service levels—memorial services, visitations, private viewings, full catered events, and more,'' and charging one basic services fee for all of these services penalizes cash-strapped consumers and asks them

[119] Some staff advisory opinions address this issue. See Funeral Rule Advisory Opinion 11–1 (2011), available at *https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-11-1* and Advisory Opinion 13–1 (2013), available at *https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-13-1;* and Advisory Opinion 16–2, available at *https://www.ftc.gov/legal-library/browse/advisory-opinions/opinion-16-2*. The Commission believes additional clarity on this issue will provide benefits to industry and consumers.

[120] The basic services fee is defined as ''[t]he basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.'' 16 CFR 453.1(p).

[121] 73 FR 13740, 13746 (Mar. 14, 2008).

[122] Id.

[123] Id.; see also 1994 Statement of Basis and Purpose, 59 FR 1592, 1607–1609.

[124] 73 FR 13740, 13747 (Mar. 14, 2008).

[125] CFA RR at 11; FCA WMA RR at 2; FCA RR at 11–12; CR RR at 4; M. Bern-Klug RR at 2–3; M. Klein RR at 8. The NJFSDA and another commenter recommended the Commission remove from the Rule the option to incorporate the basic service fee into the price of caskets. NJSFDA RR at 5–6 (noting that ''consumer trends'' are ''moving away from disposition options that require the use of caskets''); see also C. Tregillus RR at 4 (16 CFR 453.2(iii)(C)(2) should be deleted as no longer needed, unless ''there is opposition from the funeral industry based on evidence that there are still funeral providers that inflate their casket prices to cover their unallocated overhead costs and provide a profit (rather than charging a non-declinable basic services fee'').

[126] FCA RR at 11–12; M. Bern-Klug RR at 2–3.

[127] FCA RR at 11; CFA RR at 11. ''According to 2017 data released by the NFDA, the median basic services fee was $2,100, which is close to the price of a casket.'' CFA RR at 11. See also M. Bern-Klug RR at 2 (University of Iowa collected 48 GPLs in 2016; the basic services ranged from $245–$3,750).

[128] House Committee RR at 2 (''[If] they are charged a fee, consumers should know what they are paying for.'')

[129] Id.

[130] NFDA RR at 66–70.

[131] AG RR at 5.

to subsidize the overhead involved in a ''full-service, traditional funeral with all the bells and whistles.'' [132] Allowing a variable fee or reduced basic services fee also ''would help increase consumer choice, provide transparency, and allow for cost-savings,'' [133] and ''allow lower costs for simpler services, free funeral homes to offer innovative options and more choice for consumers, and maintain the basic price structure the FTC designed when it developed the Funeral Rule.'' [134] Another industry group, however, argued a variable basic services fee has a ''potential for abuse practices'' as it ''creates an opportunity for funeral providers to manipulate the content of a 'minimum service' in such a way that could induce purchasers to utilize their firm (because of the published low price) and then lead purchasers into making other added purchases not included in the 'minimum service.'' [135]

Finally, one consumer advocacy group and one individual asked the Commission to preserve the status quo.[136] The consumer advocacy group asserted funeral providers provide a ''true service'', and the basic services fee ''support[s] the continued health of these businesses.'' [137] The fee ''assures the consumer that there are specific expectations for minimal costs and insures the funeral home that their service can be adequately compensated.'' [138] The individual argued banning the fee ''is likely to have unintended and undesirable consequences. Not the least of these would be a return to embedding basic services fee costs in the prices of caskets, and now, the prices of urns, leading to greater resistance by providers to accepting lower-cost third-party caskets and urns, and thereby creating new enforcement challenges for the FTC.'' [139]

2. Objectives and Alternatives

The Commission does not believe the basic services fee should be eliminated, for the reasons set forth in the 2008 Regulatory Review Notice. The Commission, however, is interested in exploring whether consumers and businesses could benefit from a limited expansion of two of the basic services fee provisions—direct cremation and immediate burial. Commission staff has opined the Rule currently permits funeral providers to charge a lower basic services fee for these two types of services, as well as for forwarding and receiving remains, if they wish because of the limited use of the funeral provider's facilities and staff time generally associated with those services.[140] The definitions for both direct cremation and immediate burial exclude situations when a customer also wants a formal viewing or a visitation, even if it is a limited viewing or visitation.[141] If a customer wants to add a brief visitation to a direct cremation, the funeral provider must charge its full basic services fee. Thus, clarifying in the Rule concerning when a reduced basic services fee may be charged may provide benefits for providers and customers. While not a ''variable basic services fee,'' this approach would effectually give consumers a few more options in the reduced fee structure.

Therefore, the Commission is considering clarifying in the Rule that funeral providers may charge a lower basic services fee for forwarding and receiving remains, immediate burial, and direct cremation, if they wish, because of the limited use of the funeral provider's facilities and staff time generally associated with those services. In addition, the Commission is considering modifying the definition of direct cremation and immediate burial to allow those offerings to include limited viewings or visitations or other additional services, and seeks comments on whether this modification should be made and, if so, how. Funeral providers who wish to could offer these additional services as options, listing the add-on costs for the additional services on the GPL, along with the basic services fee charge due if the limited visitation option is selected. Thus, for example, a funeral provider would list on its GPL the price it charges for direct cremation, describing the services included and giving the price with and without a cremation container, as well as the additional cost if a purchaser wanted to add a limited visitation or viewing at its facility, describing the limits for that visitation, such as the amount of time or number of guests, and the associated basic services fee. The Commission seeks comment on how this change would impact both consumers and businesses, and how to clearly disclose the additional options for these two reduced basic services on the GPL.

D. New Forms of Disposition

The Review elicited some comments about methods of human disposition that have changed since the Rule was enacted. The Rule currently defines ''cremation'' as ''a heating process which incinerates human remains,'' [142] but does not mention whether newer techniques for disposition of human remains, such as alkaline hydrolysis and natural organic reduction,[143] are included in this definition. Such services do not fit within the definition of direct cremation or immediate burial but are still subject to the Rule. The Commission is considering modifications to clarify application of the Rule for providers of new forms of

[132] SIFH RR at 12–13. See also IFDA RR at 4 (noting that 68.75% of Indiana funeral providers ''were in favor of a partial non-declinable fee as alternative forms of services and dispositions become available . . . [T]he overall general feeling is the consumer will be paying for services more representative of what they receive professionally rather than a 'catch all' fee which is what the non-declinable has become over time'').

[133] AG RR at 5.

[134] Id. at 5. The NFDA argues that if ''the Funeral Rule is modified to allow a variable basic services fee, the mandatory disclosure in Section 453.2(b)(4)(iii)(C)(1) should be revised.'' NFDA RR at 71. NFDA's suggested language is as follows: ''A fee for our basic services will be added to the total cost of the funeral arrangements you select. (This basic services fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving of remains).'' Id.

One commenter thought a ''separate cost of a family viewing should be allowed without triggering a basic services charge.'' See Givens Estate RR at 1. Another argued that the FTC should not ''expand the definition of direct cremation and immediate burial to allow the addition of other services without charging the full basic services fee,'' because providers ''are really seeking relief from a very real marketplace constraint on how high their regular basic services fees can be without making their prices uncompetitive. Consumers faced with a full basic services fee increase of a thousand dollars or more just for adding a memorial service to a direct cremation are likely to take their business to a provider with a lower basic services fee, or find another location or provider for a separate memorial service.'' C. Tregillus RR at 12.

[135] NJSFDA RR at 3.

[136] FCA VABR RR at 4; C. Tregillus RR at 11. The NFDA also argued against eliminating the basic services fee: ''From a practical standpoint, 'it is virtually impossible to eliminate the non-declinable nature of the basic service fee' ''—as all consumers are using the services of the funeral director and staff. NFDA RR at 66–70.

[137] FCA VABR RR at 4.

[138] Id. at 1.

[139] C. Tregillus RR at 11.

[140] *See, e.g.,* Funeral Rule Advisory Opinion 09–6 (2009), available at *https://www.ftc.gov/sites/default/files/documents/advisory_opinions/opinion-09-6/opinion09-6.pdf.* The Commission intends to make this position unambiguously clear in this rulemaking

[141] 16 CFR 453.1 (g) (defining a ''direct cremation'' as a ''disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present''); 16 CFR 453.1(k) (defining ''immediate burial'' as a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service'').

[142] 16 CFR 453.1(e).

[143] Natural organic reduction is a new type of disposition that became legal in the State of Washington as of May 1, 2020, and was scheduled to be offered to funeral providers as soon as March 2021. This process differs from green burial interments because it transforms the deceased into soil in 4–6 weeks. See H.B. 2574—Natural Organic Reduction—Q&A, *https://www.oregonlegislature.gov/marsh/Documents/HB2574_Natural_Organic_Reduction.pdf?ID=43* (last visited August 17, 2022).

disposition and consumers considering these options.

Few commenters provided input on whether the Rule should be updated to reflect new alternative methods of disposition. One commenter suggested the Commission amend the Rule to add ''natural organic reduction process'' and ''green burials'' as additional methods of disposition, rather than incorporated under the umbrella definition of ''cremation.'' [144] To the commenter, the natural organic reduction process is different from cremation: for example, unlike with a cremation, the use of alternative containers is not needed.[145] Another commenter agreed natural organic reduction processes should not be included in the definition of ''cremation'' in the Rule, but argued that because these methods of disposition are not available in most of the country, the Rule does not need to be altered to address them.[146]

An alternative funeral provider commented to ask to be allowed to charge ''a uniform price'' for disposition via natural organic reduction, because ''it is neither practical nor either feasible for [the provider] to itemize the individual services that will be available for all decedents and next of kin as part of the [natural organic reduction] process as piecemeal offerings, unlike the way this may be done for the traditional disposition methods of direct burial and cremation.'' [147]

The Commission is considering modifying the Rule to explicitly include new methods of disposition, such as alkaline hydrolysis and human natural organic reduction. The Rule could then clarify that such providers could offer direct or immediate services with a reduced basic services fee. The Commission is also considering updating the Rule to adapt to new methods of disposition, for example the Rule requirements to offer and provide disclosures about alternative containers for direct services. The Commission wants to ensure the Rule does not stifle innovation and believes the proposed changes help level the playing field for providers of new alternative methods.

E. Embalming Disclosure

The Commission also elicited comments about whether to modify the Rule's current disclosure related to whether embalming may be required. The Rule currently requires funeral providers to include on the GPL a disclosure that states ''[e]xcept in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.'' [148]

1. Summary of Comments

Several commenters asked the Commission to clarify the embalming disclosure, although they disagreed on how it should be clarified.[149] No commenter asked the Commission to keep the current disclosure as is.

Several consumer advocates, government agencies, and one individual asked the Commission to either eliminate the embalming disclosure requirement or amend it to indicate ''that the requirement is only that of the funeral home, not that of the state,'' to avoid consumer confusion.[150] They said no state requires that viewed bodies be embalmed, although some ''require embalming only in situations where refrigeration is not available or when burial/cremation cannot happen with a 'reasonable' or defined period of time.'' [151] When consumers ''are told by a funeral home that they will not permit viewing without embalming,'' [152] consumers mistakenly assume this embalming is mandated by law and the ''only way to avoid embalming is to choose direct cremation or immediate burial.'' [153] Modifying the disclosure will also ''clarify persistent questions raised by the growing segment of funeral providers who do not offer embalming at all'' due to their religious traditions or because they only offer simple arrangements.[154]

The NFDA agreed the embalming disclosure should be amended, but for different reasons.[155] It argued embalming may be required under state law: ''37 of 50 states require that deceased human remains either be embalmed or refrigerated within a certain time span following death'' and ''46% of funeral homes do not have refrigeration facilities.'' [156] To the NFDA, the current disclaimer is misleading ''in that it implies to the consumer that embalming is rarely required by law.'' [157] The NFDA suggested the Rule be amended to plainly explain to consumers embalming is not required in 13 states, and, in the other 37 states, embalming may be required. Funeral providers can then ''explain the requirements of state law at the end of the mandatory disclosure.'' [158]

2. Objectives and Alternatives

The embalming disclosure is a preventative requirement enacted because of deceptive acts or practices by funeral providers that generated ''substantial consumer confusion about what the law requires about embalming.'' [159] The Commission is considering changing the language of this disclosure and seeks comment on how the disclosure can be improved to educate consumers accurately on the limited circumstances when embalming may be required under the laws of some states.

For example, one option the Commission wishes to explore is

[144] Recompose RR at 2–4. One commenter suggested that the FTC define ''green burial'' to ''make clear that the term applies not only to provider arrangements for casketed burials in green cemetery plots, but also to arrangements using mushroom burial suits, biodegradable tree urns, and body pods in lieu of caskets.'' C. Tregillus RR at 10–11. Another commenter asked that, if a funeral provider offers green burials, what ''this includes and the requirement for the burial board or container should be specifically stated.'' S. Robinson RR at 1.

[145] Recompose RR at 2–4.

[146] NFDA RR at 64–65.

[147] Recompose RR at 1, 3.

[148] 16 CFR 453.3(a)(2)(ii).

[149] FCA RR at 12–13; CFA RR at 11; NFDA RR at 71–73; TINA RR at 4; FCA WMA RR at 2; CR RR at 3; C. Tregillus RR at 13; AG RR at 5; UUFV RR at 2; Borderland RR at 2.

[150] CFA RR at 11; see also FCA RR at 12; TINA RR at 4; FCA WMA MA RR at 2; CR RR at 3; C. Tregillus RR at 13; AG RR at 5; Borderland RR at 2. FCA also recommended that ''Funeral providers should also be required to provide a numerical or statutory citation if there are legal requirements in the provider's state that mandate embalming in any circumstance.'' FCA RR at 12.

[151] FCA RR at 13 (compiling statistics from Slocum and Carlson, Final Rights: Reclaiming the American Way of Death. 2011 Upper Access Publishers); see also CFA RR at 11.

[152] UUFV RR at 2 (''at least one funeral home in Visalia, California have told potential purchasers that embalming and purchasing a casket is 'required' by their funeral home as a matter of 'our policy' rather than as a legal requirement. . .. The salesman I talked to claimed it was a liability issue for them, asserting that an un-embalmed body could theoretically make them subject to lawsuits or embarrassment.'').

[153] FCA RR at 12.

[154] Id. at 12–13.

[155] NFDA RR at 71–73. The NFDA also asked that the Rule be modified to only require providers that offer embalming to use the embalming mandatory disclosure. Id.

[156] Id.

[157] Id. at 71.

[158] Id. The NFDA proposed that the Rule be amended to state that ''except as may be noted below, embalming may not be required by law'' and that ''The phrase 'except as may be noted below' shall not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances. If state law does require embalming in some circumstances, the funeral provider may explain the state law requirements for embalming following this disclosure. This disclosure only has to be placed on the general price list if the funeral provider offers embalming.'' Id.

[159] 47 FR 42260, 42275 (1982) (finding that ''most funeral directors d[id] not disclose that embalming is optional'' to consumers, and ''a significant number of funeral providers have affirmatively misrepresented state laws regarding embalming'').

modifying the language of the embalming disclosure to require the funeral provider to state the relevant requirements in its jurisdiction. Thus, if the provider operates in a state that never requires embalming by law, the provider must state: ''Embalming is not required by law in__(name of state)__.'' If the provider operates in a state that requires embalming by law under certain circumstances, the provider must state those circumstances: ''Embalming is required in __(name of state)__when__(list the state's legal requirement).'' If the provider operates in multiple states with different requirements for embalming, the provider would list the requirements for each state in which the provider operates. If the provider has its own policy of requiring embalming for visitations, it could then state that on the GPL as long as it is clear it is the establishment's policy.

F. Price List Readability

The Commission elicited comments about issues with the format and readability of the itemized price lists. The Rule currently requires the GPL to list the itemized prices for 16 specific goods and services, if offered,[160] as well as several mandatory disclosures and placement requirements for those disclosures.[161] Other than those requirements, the Rule currently does not mandate a specific format for the GPL.

1. Summary of Comments

Several commenters urged the Commission to modify the Rule's provisions regarding price lists.[162] Many argued the price lists are confusing to read,[163] often ''lack important information on some fees,'' [164] and sometimes contain inconsistent description of fees, such as the inclusion or exclusion of death certificate fees, which makes it hard for consumers to compare prices.[165] For example, one commenter stated one GPL he reviewed contained four pages of direct cremation options, and ''you practically need a Ph.D. to parse out the differences and see what meets your specific needs.'' [166] Similarly, the DC Attorney General conducted a survey that found many inconsistencies in how DC funeral providers disclosed prices on their GPLs, including inconsistencies in how visitation and viewings prices and death certificate fees were disclosed.[167]

Commenters also pointed out some funeral providers structure the GPL to make it harder for consumers to notice the mandatory disclosures, such as by putting them after information about packaged funerals,[168] listing ''itemized goods and services only after 5–10 pages of packages in . . . a clear attempt to distract the consumer,'' and using ''8-point type or similar font'' for the mandatory disclosures, ''knowing that it will be overshadowed by the large type and attractive lay-out with which they offer packages.'' [169]

Several Attorney General offices encouraged the Commission to adopt a standardized GPL format through consultation with funeral homes, consumers, consumer advocates, and government agency representatives. They stated a standardized format will inhibit funeral homes from imposing illegal charges or otherwise violating the Funeral Rule,[170] and benefit businesses, by providing certainty and lowering compliance risks.[171] Other commenters agreed and argued a standardized itemized price list, if done ''with the appropriate level of clarity. . . ., [will] significantly facilitate funeral home compliance,'' [172] minimize consumer confusion,[173] make it easier for consumers to compare prices between funeral homes.[174]

Commenters expressed diverse views about what a standardized disclosure should look like. Ideas ranged from consulting with advocates, plain language experts, and government agency representatives to draft a standard disclosure,[175] creating a standard, machine-readable document, which would ''make the information more easily available through the use of accessibility devices,'' [176] and mandating that ''the list should begin with clear and prominent introductory statements.'' [177] Others commented the GPL should be ''organized in a consumer-friendly way'' [178] or with a ''plain English explanation of its contents,'' [179] that the mandatory disclosures should appear on the GPL before other goods, services, or packages,[180] the Rule should mandate that the GPL not contain any

[160] 16 CFR 453.2(b)(4).

[161] See, *e.g.,* 16 CFR 453.3(b)(2).

[162] AG RR at 4; FCA VABR RR at 1; CFA RR at 11; FCA RR at 14; FCA WMA RR at 1; CA RR at 2; FCA SC RR at 1; FCA CT RR at 1; CR RR at 3–4; TINA RR at 4; M. Turner, Full Cycle of Living and Dying RR at 1; House Committee RR at 2; Borderland RR at 2; M. Bern-Klug RR at 2–3; M. Klein RR at 5–6; NYSFDA RR at 4.

[163] CC RR at 4; see also K. Griffith RR at 1.

[164] CC RR at 4; see also AG RR at 4 (noting that a survey of GPLs conducted by the DC Attorney General found that some funeral providers do not list a separate charge for viewings or visitations).

[165] AG RR at 4; House Committee RR at 2; see also CC RR at 4 (''Another common problem is that our researchers must compare a la carte pricing listed on GPLs with packages sold by many funeral homes. It's usually quite complicated to determine whether our hypothetical family would be 'better off' buying a package.''); FCA EMA RR at 1 (''As things stand now, price and service lists vary considerably in how what is available is arranged and described. This makes comparisons among funeral homes difficult at best, even when consumers shop and plan in advance of need . . .'').

[166] M. Klein RR at 5–6.

[167] AG RR at 4.

[168] TINA RR at 4; FCA RR at 14.

[169] FCA RR at 14; see also R. Zeldin RR at 4 (''SCI DBA Dignity Memorial provides overbearing price lists designed to overwhelm and confuse the consumer and burying the itemized list at the end. These price lists are known to be over 50 pages long so as to include each and every possible package deal they could come up with!'').

[170] AG RR at 4; FCA RR at 14; see also TINA RR at 4.

[171] House Committee RR at 2; L. Northcutt RR at 3 (''If funeral homes decide to post their disclosures online, it would be helpful to consumers if that information was provided in a standardized format. This requirement will impose limited burdens on businesses who are choosing to move this information online and greatly assist consumers who want to be able to compare services online from their homes.''); AG RR at 4 (''A standard form could lay out the specific disclosures, making it easier for funeral homes to assess whether their lists satisfy regulatory requirements. Standardization would therefore streamline both compliance and enforcement.'').

[172] NFDA RR at 4.

[173] See, *e.g.,* L. Bramble RR at 1 (''Mortgage lenders are required to use a standardized HUD1 statement to make fees easier to understand and compare; standardized terms and forms make it easy for a person who is already overwhelmed to make a knowledgeable and confident decision.'').

[174] AG RR at 4; House Committee RR at 2; FCA SC RR at 1.

[175] AG RR at 4–5; see also C. Tregillus RR at 13 (suggesting copy testing of key disclosures). The AGs also encouraged the Commission to include unconventional burial services in the GPL and noted that ''[p]eriodic revisions will be necessary.'' AG RR at 4–5.

[176] House Committee RR at 2.

[177] CR RR at 3 (the GPL should begin with the following statements: ''• that the consumer has the right to choose among options and to choose individual products and services separately, • that, unless specified otherwise, no product or service is required by law, and • that any product or service that *is* required by law will be accompanied with a specific reference to the statute or ordinance that requires it, and a clear and specific description of the circumstances under which it is required'') (emphasis in original).

[178] Id. at 3. Other ideas included (1) requiring the right-of selection disclosure to be prominently displayed and the ''itemized price lists to be listed in at least as conspicuous a manner as the package deal,'' see TINA RR at 4; (2) the use of standard definitions of services to enable cost comparisons, see FCA EMA RR at 1; M. Bern-Klug RR at 2–3; C. McTighe RR at 1; (3) ''the addition of a disclaimer as to what are extraneous services and which services legally require the participation of a funeral home,'' see FCAP RR at 1; and (4) that the GPL be amended to include whether the facility offers body donation or eye/cornea donation, or green burial, see Eye Bank Ass'n of Am. RR at 1; M. Bern-Klug RR at 4.

[179] See, *e.g.,* D. O'Brien RR at 1.

[180] CFA RR at 11; FCA VABR RR at 2–3 (noting that ''regulations of the state of Virginia include a recommendation of a sample GPL in which the Basic services fee listing is first, after the required disclosure statement'').

information not expressly required or permitted by the Rule,[181] and the Commission should create a fill-in-the blank GPL, if feasible, that summarizes all unbundled services and their prices and lists the Rule's mandatory disclosures.[182] One commenter also recommended ''the inclusion of a 'safe harbor' provision for funeral homes'' to incentivize funeral home compliance.[183]

Three commenters argued against a standardized GPL.[184] The NFDA argued ''a standardized price list is not needed [] to foster comparison shopping or to increase consumer comprehension'' as ''the only empirical evidence submitted on consumer understanding of price lists shows a very high comprehension level.'' [185] It further argued that it would be ''impossible to design a standardized price list without limiting funeral options and innovation''—given the many different types of funeral homes in the country.[186] Alternative funeral provider Recompose argued ''the goods and services offered in connection with all forms of disposition are not uniform such that [a standardized price list] would be practical, particularly when it comes to natural organic reduction.'' [187] The New Jersey State Funeral Directors Association argued a standardized GPL is ''an overly prescriptive approach'' that leaves little room ''for adaption to individual funeral practices and ever-changing consumer changes, preference and trends.'' [188] It also argued a standardized GPL would create an undue hardship to funeral homes, because the ''minimum out of pocket compliance cost for this change alone could cost NJ funeral providers up to $364,000, not including labor, delivery and overhead.'' [189]

2. Objectives and Alternatives

The Commission is interested in obtaining additional comment on how the itemized price lists could be improved to maximize consumers' access to accurate itemized price information in ways that minimize the burden on funeral providers, particularly small providers.[190] One alternative under consideration would require all information that must be included on the GPL—such as the required prices for 16 products and services (if offered) and all mandatory disclosures — to appear before any non-required information, such as details about packages or bundles, caterings, or cemeteries. Under another approach, the Rule would specify ways to make sure the mandatory disclosures are clear including requirements that they be in the same font, color, and size as the rest of the content in the price lists. One other option under consideration would require any price list posted online or conveyed electronically be in machine-readable format so third parties could collect and aggregate this information. Finally, even if the Commission declines to mandate a standardized form, it could issue new templates for the itemized price lists based on the input received on how to improve readability and consumer comprehension, as an optional tool for businesses to help them comply with the Rule.

G. Impact on People in Underserved Communities

The Commission is interested in receiving comment on the Rule's effect on the purchase of funeral goods and services in historically underserved communities.[191] For example, do any of the Rule's provisions create hardships or benefits for consumers in low-income communities, those with limited or no English proficiency or from recent immigrant communities, or those living in communities of color? In another example, several programs exist that can help families of veterans and low-income consumers cover funeral expenses. The Commission is interested in knowing whether there are any particular issues or concerns related to the disclosure of price information when consumers make arrangements using such benefits to cover some or all funeral costs.

H. Other Issues

The Rule Review elicited comments on a variety of other topics and concerns related to funeral goods and services. The Commission appreciates these comments and has carefully considered them, but is not inclined to consider proposals beyond those laid out in the prior sections. Nevertheless, the Commission will briefly respond to three additional topics discussed in the Rule Review comments.

1. Cemeteries

Many commenters, including consumer advocates, industry groups, and consumers, asked the FTC to expand the Rule to cover cemeteries.[192] These commenters argued the factors that disadvantage consumers when dealing with funeral providers are also present during consumers' interactions with cemeteries,[193] and some cemetery operators are not transparent about their fees,[194] refuse to disclose prices on paper to consumers or researchers,[195] misrepresent legal and sales requirements,[196] and only offer bundled services.[197] Some commenters said

[181] C. Tregillus RR at 3–4 (''Such a prohibition would be essential for a standardized format price list that could facilitate comparison shopping for consumers, academic research and online third-party pricing guides that could consequently be kept up-to-date and accurate.'').

[182] Id. at 9.

[183] NYSFDA RR at 4.

[184] Recompose RR at 1–2; NJSFDA RR at 4–5; NFDA RR at 56–58.

[185] NFDA RR at 57 (citing an AARP commissioned Gallup poll in anticipation of the first review of the Funeral Rule which ''reported that 92% of funeral consumers surveyed 'understood all of the terms on the price list used to describe the funeral service' '').

[186] Id.

[187] Recompose RR at 1–2.

[188] NJSFDA RR at 4.

[189] Id. (suggesting instead that ''standardization should be pursued at the state level as most price comparisons are conducted between providers located in the same state'').

[190] The Commission believes that the broad variety of products and services offered by funeral homes across the nation likely makes a fully standardized price list unfeasible.

[191] Historically underserved communities include Black Americans, Latinos, Indigenous/Native American persons, Asian Americans/Pacific Islanders or other persons of color, members of religious minorities, lesbian, gay, bisexual, transgender, and/or queer persons, persons with disabilities, persons who live in rural areas, and persons adversely affected by persistent poverty or inequality.

[192] NFDA RR at 76–77; LRCPA RR at 1; FCA VABR RR at 1; FCA GKC RR at 1; FCA WMA RR at 2; FCA GR RR at 1–2; FCA ME RR at 1; FCA SC RR at 1; PMA RR at 1; FCA CTX RR at 1; CR RR at 4; FCA AZ RR at 4; FCA MN RR at 1; DC RR at 1; House Committee RR at 2; Charter Funerals RR at 1; UUFV RR at 2; Borderland RR at 2; SIFH RR at 11 n. 15; C. Reid RR at 4–7; M. Klein RR at 10; IN FDA RR at 3 (87% of its 144 licensed respondents ''believed that including cemeteries in The Rule application was a logical progression in The Rule evolution''). See also FCA RR at 16–20 (asking the Commission to conduct an investigation into whether cemeteries should be regulated); J. Blackman RR at 13–14 (same). The New York Funeral Directors Association asked that the Rule's applicability be extended to all sellers of funeral goods or services, including cemeteries. NYSFDA RR at 2.

[193] FCA RR at 18–20.

[194] FCA ME RR at 1 (Prices are not available online for cemeteries); UUFV RR at 2 (same). Other complaints included difficulties transferring cemetery rights to other buyers, see Funeral Consumer Alliance of Houston RR at 1, and complaints concerning burying family members in the same mausoleum. See FCA GR RR at 2 (noting that ''to tell a family member who just interred one parent in a mausoleum, the other parent would not be able to be placed in the same vault days after the internment is unconscionable and heartless'').

[195] FCA RR at 18.

[196] Id. at 19; NFDA RR at 76–77 (1999 NFDA Membership survey found that ''over 30% of the cemeteries imposed a fee whenever a consumer had chosen to purchase goods or services from a third-party'').

[197] NFDA RR at 76–77 (1999 NFDA comments reported results of NFDA survey, composed of 3,436 response, found that ''49.6% of the funeral homes reported that cemeteries in their areas required consumers to purchase goods and services only from the cemetery''); FCA RR at 18–20; E. Livshits RR at 1.

consumers are disadvantaged in their negotiations with cemeteries, ''because deceased family members are already buried there,'' which adds additional emotional hurdles.[198] Further, more than half of all funerals involve cemeteries,[199] and cemetery services are expensive.[200] Amending the rule would allow consumers to compare prices ''across the entire funeral service landscape,'' [201] protect consumers from deception and manipulation,[202] and provide ''a needed and long overdue level of fairness and marketplace equity to funeral firms, which are subject to the Rule's provisions all while these other sellers are not.'' [203] Some of these commenters recognized the FTC may have jurisdictional challenges regulating not-for-profit cemeteries, but they argued Commission action would still be beneficial.[204]

Two commenters, the International Cemetery, Crematory, and Funeral Association (''ICCFA''), and Carriage Services, Inc. (''Carriage''), opposed regulating cemeteries under the Rule.[205] They pointed out a large number of cemeteries are non-profits, which fall outside the scope of the Commission's jurisdiction,[206] and nothing has changed in the cemetery industry since the Commission decided in 2008 to not regulate cemeteries under the Rule.[207] ICCFA argued the data shows relatively few consumer complaints about cemetery issues,[208] and ''more and more states have developed their own internal process to report, review and also resolve cemetery issues.'' [209] Carriage also argued because cemeteries and funeral homes operate differently, it is not practical or necessary to expand the Rule to cemeteries.[210]

In the 2008 Regulatory Review, the Commission declined to embark on a proceeding to expand the Rule to cover cemeteries because ''the substantial portion of cemeteries that are not-for-profit entities [are] outside the jurisdiction of the FTC Act, and there is insufficient evidence that commercial cemeteries, crematories, and third-party sellers of funeral goods are engaged in widespread unfair or deceptive acts or practices.'' [211]

The Commission's position on this issue remains the same. No evidence of changed circumstances has been submitted that would warrant a fresh look at this issue. The Commission encourages companies or individuals with knowledge of unfair or deceptive practices by cemeteries to submit a complaint with the Commission at *reportfraud.ftc.gov.*

2. The State Exemption

Some commenters urged the Commission to ''re-open'' the state exemption provision contained in Rule Section 453.9.[212] Rule Section 453.9 allows a state agency to apply to the FTC for a state exemption from the Funeral Rule.[213] If the Commission determines (1) ''there is a state requirement in effect which applies to any transaction to which this rule applies; and (2) that state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.'' [214]

The Commission does not believe any amendments to Rule Section 453.9 are necessary. States have had and continue to have an option to apply for an exemption to Section 453.9, if they are interested in doing so, and the Commission will evaluate all such applications.

3. The Funeral Rule Offender Program

Several commenters asked the FTC to either publish the names of all the funeral homes participating in the Funeral Rule Offender Program (FROP) [215] or drop the program entirely.[216] The ''FROP allows funeral homes that have been found to be in violation of the Funeral Rule to attend educational courses offered by the NFDA instead of being subject to regulatory action.'' [217] Critics of the FROP stated it ''is unbalanced and unfair because it has little or no transparency for consumer complaints'' and ''consumers cannot really see who did what, and see the consequence.'' [218] They also claim no evidence shows the FROP has improved compliance.[219] ''In comparison, if the FTC published the names of violators, that would significantly increase the cost of a violation and likely persuade a much higher percentage of funeral homes to give compliance a much higher priority.'' [220]

Others supported keeping the FROP.[221] These commenters said the FTC should have ''an interest in encouraging voluntary compliance by offering compliance training to first offenders whose Rule violations may have resulted from inadequate training or inattention.'' [222] They argued most participants in the FROP program ''did not intentionally violate the Funeral Rule. In nearly every case, it was simply a case of employee carelessness or confusion.'' [223] And, commenters

[198] FCA RR at 17.

[199] Id. (''Though cremation recently passed the 50 percent mark, about 49 percent of households experiencing a death *have to do* business with a cemetery each year.'') (emphasis in original).

[200] Id. (''Cemetery fees commonly add $2,000 to $3,000 to the final bill for the death of a loved one.'').

[201] NYSFDA RR at 2–3.

[202] PMA RR at 1–2.

[203] NYSFDA RR at 1; see also SIFH RR at 11 n. 15. One commenter also noted that ''[m]aking things more complicated is the existence of businesses that constitute a corporate-owned mega-portfolio of around 1,500 funeral homes and several hundred cemeteries. This means that funeral homes may have arrangements with certain cemeteries that enable businesses to include costs related to the cemetery as a package, enabling funeral businesses to still overcharge consumers by solely disclosing prices related to funeral homes while surreptitiously increasing cemetery-related costs. Moreover, with more and more families opting for cremation, cemeteries will have greater incentives to make up for losses by overpricing services and goods related to their services.'' H. Lee RR at 4.

[204] One said that ''[a] robust rule in this regard for all cemeteries within its jurisdiction will aid the entire cemetery industry, non-profit, as well as for-profit, to undertake 'best practices'.'' UUFV RR at 2; see also C. Tregillus RR at 14–15 (encouraged the Commission to hold a workshop to ''explore the possibility of developing voluntary industry-wide price list disclosure standards.'')

[205] ICCFA RR at 26–29; Carriage RR at 3–4.

[206] ICCFA RR at 27–28 (pointing out that there are over 9,000 reported 501(c)(3) cemeteries, as well as additional exempt religious or charitable cemeteries and that ''some states still prohibit for-profit cemeteries, including Connecticut, Massachusetts, Maine, New Jersey and New York'' (citing Conn. Gen. Stat. § 19a-296 (1959); Mass. Ann. Laws ch. 114, § 1A (2008); Me. Rev. Stat. Tit. 13, § 1303 (1937); New Jersey Cemetery Act, 2002, 2002 Bill Text NJ A.B. 3048 (2002); N.Y. Not-for-Profit Corp. Law § 1501 (1977)); Carriage RR at 4.

[207] ICCFA at 26.

[208] Id. (noting that the ''FTC Sentinel Report identified only 1,105 complaints in funeral service out of 3,200,000'' and that ICCFA's Cemetery Consumer Service Council only received 104 complaints in 2009, which led to the disbandment of the Council).

[209] Id.; see also Carriage RR at 3–4.

[210] Carriage RR at 4.

[211] 73 FR 13740, 13742–45 (Mar. 14, 2008).

[212] NFDA RR at 41–42; ICCFA RR at 12–18; IFDA RR at 4; State FDAs RR at 1.

[213] 16 CFR 453.9.

[214] Id.

[215] CFA RR at 11–12; FCA WMA RR at 2; Funeral Consumers Alliance of North Texas (''FCA NTX'')—J. Bates RR at 1; FCA RR at 14–16; CR RR at 4; TINA RR at 4.

[216] FCA RR at 14–16.

[217] Id. at 14.

[218] FCA NTX—J. Bates RR at 1.

[219] Id.

[220] CFA RR at 11–12. Some commenters noted that the fees paid to the FROP could provide a revenue stream that could be used for enforcement. FCA RR at 15. However, any civil penalty funds collected from FTC actions do not go into the FTC's budget. Such funds go to the U.S. Treasury.

[221] C. Tregillus RR at 14; ICCFA RR at 24–25; NFDA RR at 74–75.

[222] C. Tregillus RR at 14; see also NFDA RR at 74–75 (''the point of the Program was education, not punishment'').

[223] NFDA RR at 74–75.

contend, the program works: ''Currently, there are 42 funeral homes in the FROP Program. . . . Of the several hundreds of funeral homes that have graduated from the Program over its 25 year history, NFDA has a record of only three of them subsequently being cited by the FTC for additional Funeral Rule violations.'' [224] Further, ''[t]he program is a valuable resource for funeral providers, because without it, many smaller funeral providers could be put out of business with just one violation.'' [225]

The Commission agreed to establish the FROP in 1996. The program has served the purpose of bringing into compliance with the Rule, through a compliance review and training, those funeral providers found in violation of the price disclosure provisions. Funeral providers in the program, many of whom are small businesses, make a voluntary payment to the U.S. Treasury [226] and pay a fee to the NFDA that manages the program. These amounts are typically less than the maximum Civil Penalty amounts (currently up to $46,517 per violation) set by statute for violations of the Funeral Rule.[227] At the same time, the FROP allows the Commission to focus its limited resources on a broad test shopping program that has checked the compliance of thousands of providers through the years, and on business and consumer outreach and education efforts.

The Commission would like to thank all the commenters for their thoughtful feedback about the FROP. While the program is not codified in the Rule and therefore not officially a part of any proposed rulemaking, this feedback will help the Commission weigh the pros and cons of continuing the program, or potentially modifying it, as it re-assesses its enforcement program.

IV. Issues for Comment

The Commission invites members of the public to comment on any issues or concerns they believe are relevant to this ANPR. Commenters need not re-submit any comments submitted in response to the regulatory review issued February 14, 2020, as those comments are already part of the public record, but may submit additional comment, data, and information to provide input on the questions posed in this notice and solicitation. The public is welcome to provide comment related to any concerns they see in the marketplace and ideas for improving the Rule. At this time, however, the Commission is not inclined to consider issues beyond those it has requested comment on in the previous sections.[228]

In addition to the issues raised above, the Commission solicits comments on the following specific questions. For all questions, the Commission requests supporting data, information, and argument. It is particularly interested in evidence that quantifies the benefits and costs to consumers and businesses, including small businesses.

Online and Electronic Price Disclosure

1. Should the Rule be changed to require (a) all funeral providers (b) funeral providers that maintain websites or (c) funeral providers who sell funeral products or services online, to prominently display their GPLs, or a clearly labeled link to their GPLs, on their websites? If so, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Should the Rule specify how the GPL or the link to the GPL should be prominently displayed on the website? Why or why not, and, if so, how? Explain how your proposal would benefit consumers and minimize the costs to businesses, and provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

2. Should the Rule require (a) all funeral providers, (b) funeral providers that maintain a website, or (c) any funeral provider who shows pictures and/or descriptions of caskets, alternative containers, or outer burial containers on their website, to prominently display their CPLs and/or OBCPLs, or a clearly-labeled link to these documents, on their websites? If so, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

3. In the alternative or in addition to the proposed requirements in Questions 1 & 2, should the Rule require all funeral providers that maintain a website to display a prominent statement on their website that the providers' GPLs, CPLs, and OBCPLs can be requested and to include a link, button, email address, or other electronic mechanism for people to use to request the GPL, CPL, and/or OBCPL? If so, should the providers be required to respond to such requests within any particular time? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

4. Would a requirement that funeral providers send their GPLs, CPLs and/or OBCPLs to consumers via electronic means and format present any challenges or costs for compliance or present any benefits to consumers? If so, how could such challenges or costs be minimized while still providing benefits to consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

5. In addition to the proposed requirements in Questions 1 & 2, should a funeral provider that maintains a presence on social media be required to post the provider's GPL and/or clearly-labeled links to the provider's CPL and OBCPL on its social media account? Why or why not? If not, should a funeral provider be required to link its social media account to its main website if it has one, or, provide an email address or other online mechanism that will allow visitors to request the provider's GPL, CPL, or OBCPL, and a statement that consumers can request the price lists, and should the funeral provider be required to respond to such requests within any particular time? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

6. In addition to the proposed requirements in Questions 1, 2, & 5, should the Rule contain other provisions that will embrace new platforms and technologies as they develop so that both providers and consumers can benefit from new distribution methods without requiring a Rule change? If so, how and what types of provisions would be most appropriate? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

7. Should the Rule mandate that funeral providers be required to post a

[224] Id.

[225] ICCRFA RR at 24–25.

[226] As a condition of entering FROP, the funeral provider must make a voluntary payment to the U.S. Treasury or a State Treasury in an amount equal to 0.8% of the funeral provider's average gross annual sales revenue for the proceeding three years.

[227] Federal courts have broad discretion in setting this penalty amount.

[228] The Commission also encourages anyone with knowledge of unfair or deceptive practices by a particular company, to file a report at *reportfraud.ftc.gov.*

GPL, CPL, or OBCPL, or a clearly-labeled link to these documents, on any electronic, online, or virtual method or platform that it uses to post or otherwise make available information about its products or services, sell products or services, or communicate with customers or potential customers on a non-individual basis? If so, why, and how should the Rule define or otherwise explain when GPL, CPL, or OBCPL, or a clearly-labeled link to these documents, must be posted? Also, how should such a change be implemented to maximize the benefits to consumers and minimize the costs to businesses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

8. Would requiring a funeral provider to provide the price lists online (which could be defined to include a social media account or other electronic, online, or virtual method or platform) impose any challenges or costs for businesses, including small businesses, or provide any benefits to consumers? If so, how could such challenges or costs be minimized while still benefiting consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

9. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule require all funeral providers (with or without websites) to offer to send their GPLs, CPLs, or OBCPLs electronically to a person who asks about the providers' goods or services, or asks for a copy of any of the price lists? This would include requests by telephone, text, email, weblink, social media, fax, U.S. Mail, or other new communication methods that may emerge in the future. If so, should providers be required to send the information within a certain timeframe unless the person declines the offer, or does not provide an email address or other method for receiving the electronic information? In addition, should such a requirement contain an exception for funeral providers who posts their GPL, CPL, and OBCPL clearly and conspicuously on its websites? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

10. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule require all funeral providers to electronically distribute their GPLs at the start of any arrangements discussion that is not in-person, unless a hard copy has already been provided? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

11. In the alternative or in addition to the proposed requirement in Question 10, should the Rule require that, if the consumer is making selections for a funeral arrangement online, then the provider would need to offer a prominent link to the GPL before allowing the consumer to proceed with selections? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

12. In the alternative or in addition to the proposed requirements in Questions 1, 2, 5, 6, 10, & 11, should distribution of electronic copies of the CPLs and OBCPLs also be required if discussing or showing those items in an arrangements discussion that is not in-person, or if the consumer is making selections concerning those items while shopping online? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

13. With respect to the proposed requirements in Questions 1, 2, 5, & 6, should the Rule mandate how quickly funeral providers should be required to update the GPLs, CPLs, and OBCPLs posted on their websites, social media sites, or on other electronic sites? In support of your position, identify all costs that funeral providers incur each time they update the GPL, CPL, or OBCPL on their website. Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

14. Should funeral providers be required to send an electronic copy of the Itemized Statement of Funeral Services to people who do not meet with a funeral provider in person, such as persons making arrangements over the telephone, email, or online, before agreeing to services? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

15. Should any funeral providers be exempted from any of the proposed requirements described in Questions 1, 2, 5, & 6? Why or why not? If so, who are they, how many funeral providers would qualify for this exemption, and how would the exemption impact consumers? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Crematory Fees and Additional Costs

16. Should all funeral providers be required to list third-party crematory fees in the description and price for direct cremation on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs and benefits to businesses, including small businesses.

17. Alternatively, should funeral providers that do not include the cost of third-party crematory fees in the price for direct cremation on the GPL be required to include a statement on the GPL in close proximity to the price for direct cremation that purchasers will be required to pay an additional third-party crematory fee and include a typical price range for the third-party crematory fee? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs and benefits to businesses, including small businesses.

18. Should all funeral providers be required to list additional items related to direct cremation or immediate burial not included in the price for direct cremation or immediate burial on the GPL? Why or why not? If so, which fees should be required to be disclosed? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

19. In addition to the proposed requirements in Question 18, should funeral providers be required to include such items in close proximity to the price for direct cremation or immediate burial? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the costs to businesses, including small businesses.

20. In the alternative to the proposed requirements in Question 18 & 19, should all funeral providers be required to list on the GPL in close proximity to the cost for direct cremation and immediate burial a statement listing additional fees that the funeral home knows consumers may incur when they select a direct cremation or immediate burial and the typical price range of such fees, if such fees are not included in the price for direct cremation or immediate burial? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

21. In the alternative to proposed requirements in Questions 18, 19 & 20, should funeral providers be required to include a statement in close proximity to the price for direct cremation or direct burial on the GPL that says that additional fees may apply? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the burdens and benefits to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

Reduced Basic Fee Services

22. Should the Rule be amended to clarify when funeral providers may charge a reduced basic services fee? Should the definition of direct cremation and immediate burial in the Rule be amended to allow those offerings to include limited viewings, limited visitations, or another other services? Why or why not? If so, what limited viewing, limited visitations, or other services should qualify for the reduced basic services fee under this definition? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Alternative Forms of Disposition

23. Should the Rule language be amended to specifically address alternative forms of disposition, including alkaline hydrolysis and natural organic reduction? Why or why not? If so, how should the Rule address these services? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

24. Should the Rule be amended to state that providers of alternative forms of disposition, such as alkaline hydrolysis and natural organic reduction, could offer direct or immediate services with a reduced basic services fee? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

25. Should the Rule be updated to provide exceptions for the requirements to provide alternative containers and disclosures related to alternative containers for funeral service providers using new methods of disposition or direct disposition that do not require a container? Why or why not? If so, how should the Rule be amended to allow such exceptions? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

26. Should additional disclosure language relating to alternative forms of dispositions be added to the Rule? If so, what should the disclosure say? How would the additional disclosure language impact the overall consumer experience or create any benefits or costs to consumers and businesses, including small businesses?

27. Are there provisions of the Rule that are in tension with alternative forms of disposition? If so, what are those provisions, and how are they in tension with alternative forms of disposition? Provide all evidence that supports your answer and explain whether and how the tension between the Rule and alternative forms of disposition creates costs for consumers and businesses, including small businesses.

Embalming Disclosure

28. Should the embalming disclosure contained in section 453.3(a)(2)(ii) of the Rule be amended to ensure consumers understand the specific circumstances in which embalming may be required under state law? If so, how should the disclosure be updated? Identify any surveys, studies, or other evidence that supports your position.

29. Should the Rule be amended to modify the disclosures about embalming to require providers to state on the GPL the correct law for the jurisdictions in which it operates, as follows: If the provider operates in a state that never requires embalming by law, the provider must state: ''Embalming is not required by law in (name of state).'' If the provider operates in a state that requires embalming by law under certain circumstances, the provider must state those circumstances: ''Embalming is required in (name of state) when (list the state's legal requirement).'' If the provider operates in multiple states with different requirements for embalming, the provider would list the requirements for each state in which the provider operates. Why or why not? Identify any surveys, studies, or other evidence that supports your position.

30. Should a funeral provider be required to disclose its policy regarding embalming on the GPL in close proximity to its description and price for embalming services? In addition or in the alternative, should a funeral provider be required to inform consumers that it does not possess refrigeration facilities, which may limit a consumer's options to avoid embalming under state law, or add fees related to third-party refrigeration facilities, in close proximity to its description and price for embalming services? Provide all evidence that supports your answer, including any evidence that quantifies the benefits and burdens to consumers, including how adding this requirement might impact the consumer experience, and the benefits and costs to businesses, including small businesses.

31. Should funeral providers that do not offer embalming services to any customers, due to their religious traditions or for other reasons, be required to include an embalming disclosure on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Price List Readability

32. Should the GPL, CPL, and/or OBCPL requirements be changed to improve readability for consumers? If so, what changes could be made to the format that would make the documents easier for consumers to comprehend and for businesses to know they have complied with the Rule? Also, state whether your proposed changes would add additional disclosure requirements to the Rule. If so, how would the additional disclosure language impact the overall consumer experience and describe any benefits or costs associated with these disclosures. Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses, and all surveys, studies, or other evidence that supports your position.

33. Should the Rule provide more specific requirements to ensure that the mandatory disclosures are clear and

conspicuous? If so, how and why? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses, and all surveys, studies, or other evidence that supports your position.

34. Should the Rule be changed to require that the information required to be included on the GPL, such as the prices for the 16 products and services (if offered) and the mandatory disclosures, be placed before other content (such as packages) on the GPL? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

35. Should the Rule be changed to require that the mandatory disclosures on the price lists be in the same font, color, and size as the rest of the content on the price lists? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

36. Should the Rule require that the GPL, CPL, and OBCPL be in machine-readable format? Why or why not? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

Impact on People in Underserved Communities

37. Are there any funeral provider practices that disproportionately target or affect certain groups, including lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer, including any evidence that quantifies the impacts upon affected consumers and communities, and the impacts to businesses, including small businesses and businesses owned and operated by members of historically underserved communities.

38. Should any of the provisions of the Funeral Rule be amended to avoid disproportionately impacting or affecting certain groups, including people living in lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses and businesses owned and operated by members of historically underserved communities.

39. Are there any special issues or concerns related to the disclosure of price information when consumers use benefits provided by programs to help families of veterans and low-income consumers cover funeral expenses? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, including small businesses.

40. Are there circumstances in which funeral providers should be required to make price lists, disclosures, and statements of services selected available in languages other than English? For instance, should funeral providers be required to provide itemized price lists in any language they use for advertising, or in any language they use to make funeral arrangements? What would be the effect of such a requirement, and what costs and benefits would it entail?

V. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 3, 2023. Write ''Funeral Rule ANPR, Project No. P034410'' on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of public health protections and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form. If you file your comment on paper, write ''Funeral Rule ANPR, Project No. P034410'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information such as your or anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before January 3, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

VI. Public Workshop

The Commission seeks the broadest participation by the affected interests in the rulemaking. To that end, the Commission will host a public workshop to hear from the public about these issues and discuss possible

amendments. Staff will announce more details about the workshop soon.

By direction of the Commission.

April J. Tabor,

Secretary.

Note: the following statements will not appear in the Code of Federal Regulations.

Statement of Chair Lina M. Khan

People are at their most vulnerable when they're grieving. That was the insight behind the FTC's Funeral Rule, which first took effect in 1984. The goal was to prevent consumers from being taken advantage of during moments of deep grief and loss. Among other provisions, the Rule requires funeral homes to provide a clear list of prices for goods and services offered. This helps family members make informed decisions and avoid paying for things they don't need.

One challenge is that the Funeral Rule was crafted before the internet age, so it only applies in person or over the phone. Even though Americans today typically begin their shopping online, funeral providers are not required to list prices on their websites. The staff report that the Commission is voting on today found that just under 25 percent of funeral home websites provided a full list of prices. Over sixty percent provided little to no price information whatsoever. Stories persist about consumers spending hours trying to answer the most basic questions about how much it will cost to bury their loved ones.[1] In the internet era, it's hard to see why anyone should have to physically visit or call multiple funeral homes just to compare prices.

Today's advance notice of proposed rulemaking seeks comment on several concrete ways to modernize the Funeral Rule. This includes asking whether the Rule should require funeral providers to provide pricing information online or via email, which could help consumers make informed decisions during some of the most difficult moments of their lives. It could also better incentivize funeral homes to offer the most competitive prices. This would ultimately lower the expensive burden of putting a loved one to rest.[2]

I am pleased to support this effort, and I look forward to the public comments during our rulemaking proceeding. I'd like to thank our staff for their excellent work on this matter.

Statement of Commissioner Rebecca Kelly Slaughter

Funerals are not only emotionally overwhelming, they are also financially overwhelming. The average cost of a funeral in 2022 is $7,360 and has risen over 6.6 percent over the past five years.[1] These costs don't include end-of-life care or the thousands of additional dollars required for a cemetery plot and headstone. Not only is this a staggering amount of money for most consumers to cover—it is a purchase that they have to make under incredible stress. Grieving, rushed, distracted and unprepared, consumers seeking funeral services are in little position to negotiate. The FTC Funeral Industry Practices Rule requires that funeral providers share written pricing information when consumers inquire in person. The Rule also requires that providers provide accurate price information to consumers who call them. But in its current form, the Funeral Rule does not require funeral providers to publish pricing information online. This framework can make planning and price comparison challenging under any circumstance, but I can't imagine how hard this was for the hundreds of thousands of consumers who had to navigate making funeral arrangements during the height of the pandemic. In early 2020, the Commission initiated a routine review of the Rule, which generated 785 comments. I've reviewed many submissions in which consumers described how difficult it was to make funeral arrangement for loved ones who lived far away or how ill-equipped they were to negotiate or make choices at the height of their grief.[2] I want to share an excerpt from one commenter's powerful description of his excruciating experience trying to make arrangements for his young son without online pricing information:

> In many, if not most cases, death comes suddenly and is unexpected. This leaves the loved ones of the deceased little time to prepare for the viewing and burial.
>
> This was true for my family with the death of our 4-year-old son. While we had been provided a terminal cancer diagnosis for many months for my oldest son, I could not bring myself to begin planning for his funeral. I had limited time to spend with him outside of work, I did not think it made sense to invest any of it shopping for funeral services.
>
> When the end came for him, and it was sudden, we were forced to decide between two funeral homes in our town. We chose the largest one because we expected a large crowd to attend. I had no idea what to expect when I arrived to discuss arrangements, so you can imagine my surprise when I learned the cost involved. Online pricing would have allowed me to prepare in advance and to prepare to negotiate what was by far the largest purchase I've ever made without any advance notice. I could have spent nights reviewing the cost without feeling guilty about leaving my son and the limited time we had together.
>
> I had a crushing level of grief when I walked into that funeral home and I had absolutely no way to negotiate when they handed me their proposed price. How is that fair? They already had possession of my son's body, so it was not like I could walk out and begin shopping.
>
> To place this in context, I believe my first car, that I purchased in 1998, cost less than his burial and I knew exactly what that would cost because I had the internet available to me. I could arrange for financing from the bank before I ever bought the car so I knew how much it would cost each month and when I would make the final payment. I felt completely prepared to purchase my car and I was very comfortable when I walked into the dealership to finalize the purchase . . .
>
> There is no logical reason not to allow for online pricing except to suppress consumer awareness . . . Government's job is to protect their citizens and this is one instance when we need protecting because emotionally compromised consumers are being taken advantage and we have no way of preventing it.[3]

I want to thank this father and all the commenters to the 2020 rule review

[1] Robert Benincasa, *Despite Decades-Old Law, Funeral Prices Are Still Unclear,* NPR (Feb. 8, 2017), *https://www.npr.org/2017/02/08/504031472/despite-decades-old-law-funeral-prices-are-still-unclear.*

[2] *See, e.g.,* Joshua Slocum, *Death with Dignity? A Report on SCI/Dignity Memorial High Prices and Refusal to Disclose These Prices,* Funeral Consumers Alliance & Consumer Fed'n of America (Mar. 2017), *https://funerals.org/wp-content/uploads/2017/03/3-6-17-Funeral-SCI_Report.pdf;* Joshua Slocum & Stephen Brobeck, *The Relationship Between Funeral Price Disclosures and Funeral Prices: A California Case Study, Consumer Fed'n of America* (Feb. 2020), *https://consumerfed.org/wp-content/uploads/2020/02/California-Funeral-Home-Pricing-Report.pdf.*

[1] 17 Mind-Boggling Funeral Cost Statistics in 2022 & Beyond, Kelly Maxwell, Seniors Mutual, *https://seniorsmutual.com/funeral-cost-breakdown/*.

[2] See, *e.g.,* FTC–2020–0014–0406 Comment Submitted by John J. Wilson (''[M]y mother who lived alone in a retirement home in Phoenix, Arizona passed away and since I live in Austin, Texas, this required me to make funeral arrangements in a distant city that I was not familiar with. Without the funeral price list online this made my task much more difficult. In fact, I feel I was at the mercy of the funeral provider. Without having knowledge of their prices in advance, I felt that they could charge me whatever amount they desired and I was defenseless. They had me over a barrel, so to speak. I'm sure I paid much more than necessary for my mother's funeral arrangements. If I had had their price list before visiting the funeral provider, I would have been in a much better bargaining position, but unfortunately this was not the case.''); FTC–2020–0014–0637 Comment Submitted by Elizabeth Menkin (''When my mother died, it was impossible to collect price lists for any cost-comparison survey at the time that we needed to make arrangements. I had to individually contact funeral homes and hope they would voluntarily email/mail a price list. I would have had to drive to funeral homes who refused. This is a terribly burdensome task to impose on a grieving family.'').

[3] FTC–2020–0014–0685 Comment Submitted by Adam Drapczuk III.

who shared their views and experiences and I whole-heartedly support the FTC's publication of the advance notice of proposed rulemaking asking specific questions about whether and how to modernize the Funeral Rule to better protect consumers trying to make a huge purchase under the worst circumstances. I encourage all consumers and other stakeholders to weigh in on the questions posed by the ANPR.

[FR Doc. 2022–23832 Filed 11–1–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 80

[Docket No. FDA–2022–N–1635]

RIN 0910–AI69

Color Additive Certification; Increase in Fees for Certification Services

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to amend the color additive regulation to increase the fee for certification services. The change in fees will allow FDA to continue to maintain an adequate color certification program as required by the Federal Food, Drug, and Cosmetic Act (FD&C Act). The fees are intended to recover the full costs of operation of FDA's color certification program.

DATES: Either electronic or written comments on the proposed rule must be submitted by January 3, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–1635 for ''Color Additive Certification; Increase in Fees for Certification Services.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Bryan Bowes, Office of Cosmetics and Colors (HFS–105), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1122; or Carrol Bascus, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Proposed Rule

The proposed rule, if finalized, would amend the color additive regulation to increase the fee for certification services. The change in fees would allow FDA to continue to maintain an adequate color certification program as required by the FD&C Act. The fees are intended to recover the full costs of operation of FDA's color certification program.

B. Summary of the Major Provisions of the Proposed Rule

This proposed rule, if finalized, would amend the color additive regulation to increase the fees for certification services. The fees for straight colors including lakes would be $0.45 per pound ($0.10 per pound increase) with a minimum fee of $288. There would be similar increases in fees for repacks of certified color additives and color additive mixtures.

C. Legal Authority

We are issuing this proposed rule consistent with our statutory which requires that fees necessary to provide, maintain, and equip an adequate color additive certification program be specified in our regulations. FDA also derives authority to issue this proposed rule from the FD&C Act, which authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

The proposed rule, if finalized, would amend existing color additive regulations by increasing fees for certification services. The costs of this proposed rule include the cost to read and understand the rule. As the increase in fees is not associated with any change in our certification program, no economic benefits are expected to result from the proposed rule. Similarly, the impact of the increase in certification fees on color additive manufacturers is considered a transfer, rather than an economic cost. Accordingly, we do not estimate economic benefits associated with this proposed rule, and the impact of the increase in color certification fees is estimated as an ongoing transfer from manufacturers of color additives to the Federal Government. The economic burdens of this proposed rule, if finalized, would accrue to color additive manufacturers. We estimate a one-time cost to read and understand the rule for all color additive manufacturers. The present value of this cost is approximately $1,407 at a 3 percent rate of discount, and $1,354 at a 7 percent rate of discount. The annualized value of these costs estimates is approximately $165 at a 3 percent discount rate and $193 at a 7 percent discount rate.

II. Background

A. Introduction

Certification of color additives by a self-supporting process has been required since the enactment of the FD&C Act. In accordance with section 721(a)(1)(B) of the FD&C Act, certain color additives must be certified for use by FDA in food, drugs, cosmetics, and medical devices. FDA analyzes samples from each batch of color additive received from a manufacturer and verifies that it meets composition and purity specifications. Certification is performed before the additives are permitted to be used in products. Manufacturers pay fees, based on the weight of each batch for certification. These fees support FDA's color certification program.

In the **Federal Register** of March 29, 2005 (70 FR 15755), we issued an interim final rule (IFR) amending the color additive regulations by increasing the fees for certification services due to a general increase in the cost associated with operating the certification program. The IFR increased the fees per pound. The fee for straight colors including lakes increased from $0.30 to $0.35 per pound (a $0.05 per pound increase) with a minimum fee increase from $192 to $224. The fee for repacks of certified color additives and color additive mixtures increased from $30 to $35 for 100 pounds or less, from $30 to $35 plus $0.06 [1] for each pound over 100 pounds up to 1,000 pounds, and from $84 to $89 plus $0.02 per pound over 1,000 pounds.

B. Need for the Regulation

The current fee schedule specified in part 80 (21 CFR part 80) became effective in 2005 and was amended in 2006. Since 2005, the costs of the certification program have significantly increased because of general operating expenses, including the purchase and maintenance of critical equipment, rent and facility charges, and escalating staff payroll. Therefore, we propose to increase the fees for certifying color additives to reflect increasing operating costs for the certification program. The fee schedule for color additive certification, as provided for in our regulations, is designed to cover all the costs involved in certifying batches of color additives. This includes the cost of specific tests required by the regulations and the general costs associated with the certification program, such as costs of accounting, reviewing data, issuing certificates, conducting research, inspecting establishments, and purchasing and maintaining equipment. The current fee schedule is insufficient to provide, equip, and maintain an adequate certification program. Consistent with section 721(e) of the FD&C Act, the proposed increase is necessary to cover increasing operating costs and maintain an adequate color certification program.

III. Description of the Proposed Rule

The proposed rule, if finalized, would revise § 80.10 (21 CFR 80.10), ''Fees for certification services,'' to:

- increase the fee for certification services from $0.35 to $0.45 per pound for straight colors including lakes, and change the minimum fee from $224 to $288 (proposed § 80.10(a));
- increase the fees for repacks of certified color additives and color additive mixtures from $35 for 100 pounds or less to $45 (proposed § 80.10(b)(1));
- increase the fees for repacks of certified color additives and color additive mixtures over 100 pounds, but not over 1,000 pounds, from $35 plus $0.06 for each pound over 100 pounds to $45 plus $0.08 for each pound over 100 pounds (proposed § 80.10(b)(2)); and
- increase the fees for repacks of certified color additives and color additive mixtures over 1,000 pounds from $89 plus $0.02 for each pound over 1,000 pounds to $114 plus $0.03 for each pound over 1,000 pounds (proposed § 80.10(b)(3)).

Increasing the fees will ensure the viability of the certification program and offset the increased costs of maintaining this program.

IV. Proposed Effective Date

We propose that any final rule resulting from this rulemaking be effective 30 days after the final rule's date of publication in the **Federal Register**. We believe that this effective date is appropriate because it will provide industry sufficient time to prepare for and adjust to the change in fees.

V. Preliminary Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order

[1] We had originally specified ''$0.05'' for each pound over 100 pounds up to 1,000 pounds. Subsequently, in the **Federal Register** of December 7, 2006 (71 FR 70873), we amended the IFR to correct this typographical error.

12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all 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, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the increase in fees for color certification services would not significantly increase costs to manufacturers, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Costs and Benefits

This proposed rule, if finalized, would amend existing color additive regulations by increasing fees for certification services. The fee schedule for color additive certification, as provided for in this proposed regulation, is designed to cover all the costs of operation of FDA's color certification program. This includes both the cost of specific tests required by the regulations and the general costs associated with the certification program, such as the costs of accounting, reviewing data, issuing certificates, conducting research, inspecting establishments, and purchasing and maintaining equipment. The fee for certification services of straight colors including lakes would increase from $0.35 per pound to $0.45 per pound, with the minimum fee increasing from $224 to $288. The fees for repacks of certified color additives and color additive mixtures would increase from $35 for 100 pounds or less to $45. The fee for repacks of certified color additives and color additive mixtures over 100 pounds, but not over 1,000 pounds would increase from $35 plus $0.06 for each pound over 100 pounds to $45 plus $0.08 for each pound over 100 pounds. The fee for repacks of certified color additives and color additive mixtures over 1,000 pounds would increase from $89 plus $0.02 for each pound over 1,000 pounds to $114 plus $0.03 for each pound over 1,000 pounds.

The economic burdens of this proposed rule, if finalized, would accrue to color additive manufacturers. We estimate a one-time cost to read and understand the rule for all color additive manufacturers. The present value of this cost is approximately $1,407 at a 3 percent rate of discount, and $1,354 at a 7 percent rate of discount. The annualized value of these costs estimates is approximately $165 at a 3 percent discount rate and $193 at a 7 percent discount rate. Because the value of these impacts is small relative to manufacturer revenues, we assume that the supply of color additives would not be affected by this proposed rule. Consequently, we estimate no other impacts associated with this proposed rule.

As noted in the preamble, the fees are intended to recover the full costs of operation of FDA's color certification program. Since 2005, the costs of the certification program significantly increased as a result of escalating staff payroll, rent and facility charges, as well as general operational expenses, including purchasing and maintaining equipment. As the increase in fees is not associated with any change in our certification program, no economic benefits are expected to result from the proposed rule, if finalized. Similarly, the impact of the increase in certification fees on color additive manufacturers is considered a transfer, rather than an economic cost. Accordingly, we do not estimate economic benefits associated with this proposed rule, and the impact of the increase in color certification fees is estimated as an ongoing transfer from manufacturers of color additives to the Federal Government. Our estimates are summarized in table 1.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE

[Millions of 2020 dollars over 10-year time horizon]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (yearrs)	
Benefits:							
Annualized Monetized $/year					7		
					3		
Annualized Quantified					7		
					3		
Qualitative:							
Costs:							
Annualized Monetized $/year	$0.00019			2020	7	10	
	0.00016			2020	3	10	
Annualized Quantified					7		
					3		
Qualitative							
Transfers:							
Federal Annualized Monetized $/year	$2.46			2020	7	10	
	2.46			2020	3	10	
From/To	From: Manufacturers of color additives			To: Federal Government			

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE—Continued

[Millions of 2020 dollars over 10-year time horizon]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (yearrs)	
Other Annualized Monetized $/year					7 3		
From/To	From:			To:			
Effects: State, Local, or Tribal Government: No effect..							
Small Business: The proposed rule, if finalized, would generate costs to small businesses, as well as transfers from small businesses to FDA that we treat as costs from the perspective of the small business. On average, these costs amount to approximately 0.2732% of annual average revenues of the small firms in the affected industry.							
Wages: No effect. Growth: No effect.							

C. Summary of Regulatory Flexibility Analysis

We have examined the economic implications of this proposed rule for small entities as required by the Regulatory Flexibility Act. If a proposed rule would have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the proposed rule on small entities. Consequently, this analysis, together with other relevant sections of this document and the preamble of the proposed rule, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations*.

VI. Analysis of Environmental Impact

We have carefully considered the potential environmental effects of this action. We have concluded, under 21 CFR 25.30(h), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

IX. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FDA invites comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

X. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; it is also available electronically at *https://www.regulations.gov*. FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, ''Color Additive Certification; Increase in Fees for Certification Services'' Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis. Available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*.

List of Subjects in 21 CFR Part 80

Color additives, Cosmetics, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 80 be amended as follows:

PART 80—COLOR ADDITIVE CERTIFICATION

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 21 U.S.C. 371, 379e.

■ 2. In § 80.10, revise paragraphs (a) and (b) to read as follows:

§ 80.10 Fees for certification services.

(a) *Fees for straight colors including lakes.* The fee for the services provided by the regulations in this part in the case of each request for certification submitted in accordance with § 80.21(j)(1) and (2) shall be $0.45 per pound of the batch covered by such requests, but no such fee shall be less than $288.

(b) *Fees for repacks of certified color additives and color additive mixtures.* The fees for the services provided under the regulations in this part in the case of each request for certification submitted in accordance with § 80.21(j)(3) and (4) shall be:

(1) 100 pounds or less—$45.

(2) Over 100 pounds but not over 1,000 pounds—$45 plus $0.08 for each pound over 100 pounds.

(3) Over 1,000 pounds—$114 plus $0.03 for each pound over 1,000 pounds.

* * * * *

Dated: October 21, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–23844 Filed 11–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221026–0226]

RIN 0648–BL75

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan. Amendment 23 was developed by the Mid-Atlantic Fishery Management Council to establish a revised Atlantic mackerel rebuilding plan, set the 2023 Atlantic mackerel specifications and a river herring and shad catch cap for the Atlantic mackerel fishery, establish a recreational possession limit, and modify in-season closure measures. This action is necessary to prevent overfishing and rebuild the Atlantic mackerel stock based on a 2021 management track assessment that found the Atlantic mackerel stock remains overfished and subject to overfishing. The intended effect of this rule is to sustainably manage the Atlantic mackerel fishery and achieve optimum yield on a continuing basis.

DATES: Public comments must be received by January 3, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0098, by the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0098 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Mid-Atlantic Fishery Management Council prepared a draft environmental assessment (EA) for Amendment 23 that describes the proposed action and other alternatives considered and provides a thorough analysis of the impacts of the proposed action and alternatives considered. Copies of Amendment 23, including the draft EA and the preliminary Regulatory Impact Review, and the Regulatory Flexibility Act analysis, are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA and associated analysis is accessible via the internet at *https://www.mafmc.org/s/Mack-Rebuild-2-2022-08-19-sub.pdf.*

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281–9150.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic mackerel fishery is managed under the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) through an annual quota, possession limits, and a catch cap for bycatch of river herring and shad. In-season accountability measures (AM), including closures of the fishery through possession limit reductions, help ensure catch does not exceed the Atlantic mackerel annual catch limit (ACL) or the river herring and shad catch cap. Reactive AMs require a pound-for-pound payback the following year if landings exceed the Atlantic mackerel ACL.

Current regulations require the Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). Specifications are the combined suite of commercial and recreational catch levels and management measures necessary to prevent such catch levels from being exceeded. As part of this process, the Council sets the ACL, domestic annual harvest (DAH), domestic annual processing, total allowable level of foreign fishing, joint venture processing, and commercial and recreational annual catch targets (ACT) for up to three years. These specifications are reviewed annually, and may be revised by the Council based on updated information.

Atlantic mackerel recruitment has been declining since 1999 and has been below the long-term average since 2009. On November 29, 2019 (84 FR 58053), as requested by the Council, NMFS implemented a 5-year Atlantic mackerel rebuilding plan. A July 2021 Atlantic mackerel management track assessment concluded that the Atlantic mackerel stock remained overfished and subject to overfishing. This management track assessment also determined that due to previous assumptions about potential recruitment that did not come to fruition, the original rebuilding no longer provided a realistic rebuilding approach. Stock biomass is estimated to have nearly tripled in size from 2014 to 2019 (from approximately 8 percent to 24 percent of rebuilt), but full rebuilding on the original schedule, by 2023, now appears impossible. The stock is expected to be less than half rebuilt by 2023. The final assessment summary report is available on the Northeast Fisheries Science Center (NEFSC) website (*www.nefsc.noaa.gov/saw/reports.html*).

In response to the 2021 Atlantic mackerel management track assessment, the SSC recommended that measures be implemented to eliminate or minimize additional catch to reduce the potential biological impacts of catch levels while the Council developed a revised Atlantic mackerel rebuilding plan. On January 12, 2022 (87 FR 1700), NMFS published an interim rule that reduced the 2022 DAH of Atlantic mackerel from 17,312 mt to 4,963 mt in order to limit U.S. commercial catch to approximately the levels realized during 2021. These interim measures were extended on July 6, 2022 (87 FR 40139), to remain effective for the entire 2022 Atlantic mackerel fishing year and will expire on January 13, 2023.

In response to the 2021 Atlantic mackerel management track assessment, the Council developed Amendment 23 to revise the Atlantic mackerel rebuilding plan that would prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act. At its June 2022 meeting, the Council recommended to establish a 10-year Atlantic mackerel rebuilding plan and the 2023 Atlantic mackerel specifications through Amendment 23. On August 19, 2022, the Council submitted the amendment and draft EA to NMFS for preliminary review. The Council reviewed the proposed regulations in this rule, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in section 303(c) of the Magnuson-Stevens Act. This action also includes 2023 Atlantic mackerel specifications based on the proposed rebuilding plan including a modified fishery closure approach, a status quo river herring and shad catch cap, and a new recreational possession limit, as described further below.

Proposed Measures

Under the Magnuson-Stevens Act, NMFS is required to publish proposed rules for public comment after preliminarily determining whether they are consistent with applicable law. When a Council approves and then transmits a fishery management plan or amendment to NMFS, a notice of availability announcing a 60-day comment period is published in the **Federal Register** (87 FR 64430). Within 30 days of the end of the comment period, NMFS must approve, disapprove, or partially approve the plan or amendment based on consistency with law. We are seeking comments on the Council's proposed measures in Amendment 23, as described below, and whether they are consistent with the Mackerel, Squid, and Butterfish FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

1. Atlantic Mackerel Rebuilding Plan

For stocks that are overfished, section 304(e)(4) the Magnuson-Stevens Act requires that a rebuilding program shall be as short as possible, taking into account the status and biology of any overfished stocks, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem. The Magnuson-Stevens Act also requires the Council to develop measures for a rebuilding plan as soon as possible and the rebuilding plan must rebuild the stock within 10 years. In this action, the Council considered five rebuilding alternatives that made a variety of recruitment assumptions and used different fishing mortality rates as risk buffers that resulted in a range of probability (52 percent to 62 percent) of the stock being rebuilt in 10 years. The Council proposed an alternative that assumes that recruitment starts low (similar to recruitment from 2009 to present) and then increases toward long-term typical recruitment as the stock rebuilds. This alternative also assumes a fishing mortality rate of 0.12, which is predicted to have a 61 percent probability of rebuilding the Atlantic mackerel stock in 10 years. This proposed action sets the overall rebuilding plan and the 2023 ABC specified in Table 1. The other ABCs provided in Table 1 are projections that will be revisited during future specification setting. A new stock assessment in 2023 will inform the quotas set beyond 2023.

TABLE 1—PROJECTED ATLANTIC MACKEREL ABC AND STOCK BIOMASS FOR PROPOSED REBUILDING ALTERNATIVE

	Catch (mt)	Biomass (mt)
2023	8,094	80,745
2024	9,274	91,738
2025	10,540	103,756
2026	11,906	116,857
2027	13,408	131,291
2028	15,004	146,553
2029	16,631	162,239
2030	18,261	177,731
2031	19,814	192,045
2032	21,215	204,796

While less or zero catch would rebuild the Atlantic mackerel stock faster, the Council recommended the rebuilding plan alternative that was as short a time as possible given the stock's status, biology, needs of fishing communities, and the interaction of the stock within the marine ecosystem. This proposed rebuilding alternative and associated 2023 ABC would set a quota 41-percent less than the 2019–2021 average landings of 6,187 mt with an associated $3.62 million average ex-vessel revenue. However, given the relatively few vessels participating in the Atlantic mackerel fishery in recent years, the relatively low landings, and the small reduction in quota from recent landings, the impacts would be slightly negative in the short term. However, from a long-term perspective, a rebuilt Atlantic mackerel stock could return about $7.1 million annually to the Atlantic mackerel fishery.

2. Atlantic Mackerel Specifications

Based on the Council's recommendation, NMFS published an interim rule (87 FR 1700 (January 12, 2022) and 87 FR 40139 (July 6, 2022)) that implemented revised 2022 Atlantic mackerel specifications which will expire on January 13, 2023. This interim rule intended to minimize additional 2022 catch to reduce the potential biological impacts of catch levels while the Council developed this rebuilding plan. The original Atlantic 2022 mackerel specifications were established in 2021 under the original rebuilding plan (86 FR 38586; July 22, 2021), and these much higher specifications would roll over into 2023 after expiration of the interim rule if Amendment 23 is not approved. If approved, Amendment 23 would replace those 2022 roll-over specifications that were previously set in 2021. Table 2 presents the proposed 2023 Atlantic mackerel specifications. The proposed 2023 commercial quota would be a 27-percent decrease from the interim 2022 commercial quota and a 79-percent decrease from the original 2022 commercial quota set in 2021, which would become effective after the interim rule expires on January 13, 2023, if final Amendment 23 measures are not in place.

TABLE 2—PROPOSED 2023 ATLANTIC MACKEREL SPECIFICATIONS

ABC/ACL	8,094	a
Canadian Catch Deduction	2,197	b
Rec Catch Deduction	2,143	c
Commercial Discards	115	d
Commercial Quota	3,639	e = a − b − c − d
Before May 1 First Closure Threshold (-886 mt)	2,753	f = e − 886
May1/after First Closure Threshold (-443 mt)	3,196	g = e − 443

TABLE 2—PROPOSED 2023 ATLANTIC MACKEREL SPECIFICATIONS—Continued

Final Closure Threshold (-100 mt)	3,539	h = e − 100

The Canadian catch deduction is based on recent Canadian landings. The 2021 Canadian landings were 4,395 mt. Canada closed its directed Atlantic mackerel fishery for 2022 and therefore may have minimal landings in 2022. The Council decided to deduct 2,197 mt from the 2023 ABC, which represents half of the 2021 Canadian landings. The 2,143-mt recreational deduction is the 2019–2021 average recreational catch minus 17 percent to account for an expected reduction in recreational catch due to the proposed recreational possession limit. The 115-mt commercial discard deduction is based on the average discard rate from 2017–2019. There have been no ABC overages in the mackerel fishery, so it was determined that a management uncertainty buffer is not necessary at this time, and the modified inseason closure measures below are expected to effectively manage catch and prevent overages.

3. In-Season Closure Provisions

To address the lower quota available to the U.S. commercial Atlantic mackerel fishery, this action proposes a modified closure approach. This modified approach proposes an initial directed fishery closure that is dependent on the time of year, and a final directed fishery closure that would happen sequentially after an initial closure. An initial directed fishery closure would occur before May 1, once 886 mt of the commercial quota is remaining, or on or after May 1, once 443 mt of the commercial quota is remaining. Only one initial closures would occur within a fishing year. If either of these closures of the directed mackerel fishery are triggered, the following trip limits would be implemented: 40,000 lb (18.14 mt) for Tier 1, 2, or 3 limited access permits; and 5,000 lb (2.27 mt) for incidental/open access permits.

This action also proposes a final closure threshold when 100 mt of the commercial quota is remaining at any point during the fishery year following the initial closure thresholds. Once a final closure is triggered, all commercial permits would be limited to a 5,000-lb (2.27-mt) trip limit to minimize any potential quota overages. Finally, this action proposes that NMFS would have the discretion not to close the fishery in November and December if performance suggests that a quota overage is unlikely, which applies to any type of Atlantic mackerel closure. This final measure is intended to increase the likelihood that optimum yield can be harvested, while still minimizing the likelihood of and overage by limiting this authority to November and December at the end of the fishing year.

4. Recreational Possession Limit

Because of the low Atlantic mackerel ABCs needed, at least at the beginning of the rebuilding period, a recreational possession limit was deemed necessary to ensure recreational catch is reduced to commensurate with the reduction in the commercial quota. The Council considered alternatives of 10-, 15-, and 20-fish per person recreational possession limits. This action proposes the 20-fish per person Atlantic mackerel possession limit. The Council preferred this alternative to support ongoing rebuilding, while recognizing that smaller possession limits could cause substantial economic impact that would ripple through tuna and other fisheries that have not dealt with a mackerel possession limit to date. A 20-fish limit marks a meaningful first step in managing the recreational mackerel fishery for 2023 and can be revised in a future specifications action. This proposed recreational possession limit would reduce recreational catch by 17 percent compared to average 2019–2021 recreational catch which is expected to assisting achieving a rebuilt stock.

The Council has been working closely with the states of Maine, New Hampshire, and Massachusetts, as the majority of recreational Atlantic mackerel catch occurs in these state waters (there has been minimal recreational mackerel catch south of Massachusetts in recent years). The Council has coordinated with the aforementioned states in the development of these recreational measures, and it appears likely that these states will mirror this proposed Federal recreational possession limit. This coordination is needed in order to achieve the reduction in catch necessary.

5. River Herring and Shad Catch Cap

In 2014, Amendment 14 to the FMP (February 24, 2014; 79 FR 10029) implemented a catch cap to manage the bycatch of river herring and shad in the Atlantic mackerel fishery. Once this cap is reached in a given fishing year, Atlantic mackerel commercial possession limits are reduced to 20,000 lb (9.08 mt) for the rest of the year. The catch caps are monitored based on river herring and shad bycatch recorded in observer and portside sampling data for mackerel trips by limited access vessels, or trips in which at least 20,000 lb (9.08 mt) of Atlantic mackerel are landed.

The Council considered three alternatives for the river herring and shad catch cap including 129 mt (status quo), 89 mt (median river herring and shad catch 2005–2012), and a cap amount that would scale with the Atlantic mackerel commercial quota. To continue to manage river herring and shad catch in the Atlantic mackerel fishery, this action proposes a status quo catch cap of 129 mt. This alternative was preferred because lower caps may be impracticable to monitor, and the small scale of the Atlantic mackerel fishery at current quotas should lead to small incidental catch of river herring and shad regardless of the catch cap amount.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Amendment 23 to the Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making a final determination, NMFS will take into account the data, views, and comments received during the comment period.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed action, if adopted, would not have a significant economic impact on a substantial number of small entities. More information on this determination is provided below.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an environmental assessment. This proposed action would affect all vessels that hold any for-hire or commercial permits for Atlantic mackerel. Some small entities own multiple vessels with Atlantic mackerel permits.

For-Hire

In 2021, there were 630 vessels with for-hire permits allowing catch of Atlantic mackerel in Federal waters; 315 had revenues that classified them as for-hire operations. These 315 permits were owned by 265 entities, all of which qualified as small businesses under current SBA definitions (under $7.5 million to be a for-hire fishing small business entity). The preferred rebuilding plan and recreational possession limit were chosen considering the impacts on fishing businesses, and the Council chose the 20-fish possession limit specifically to limit impacts on recreational fishing including for-hire fishing. The anticipated 17-percent catch reduction expected with this proposed possession limit should not have a significant adverse impact on a substantial number of small entities to its limited impact.

Commercial

In 2021, there were 1,535 vessels with commercial Atlantic mackerel permits allowing catch of mackerel in Federal waters. Of those vessels, 1,433 vessels were listed as commercial fishing operations or had no revenue in 2021. These 1,433 vessels were owned by 1,037 entities, 1,026 of which qualified as small businesses under current SBA definitions (under $11 million to be a commercial fishing small business entity).

Overall, the 1,026 relevant small commercial entities derived 0.2–0.3 percent of their revenues from Atlantic mackerel 2019–2022 (annual totals). The proposed rebuilding plan would reduce the quota compared to 2019–2021 landings, to some degree for a few years, before potentially increasing beyond 2019–2021 landings. As a result, this action would have some short-term impacts on these entities, but because Atlantic mackerel make up such a small proportion of revenues the proposed action should not have a significant adverse impact on a substantial number of small entities. Also, only 12 individual entities had total 2019–2021 Atlantic mackerel revenues that represented at least 5 percent of total revenues. Rebuilding Atlantic mackerel to a more productive stock size should also help these entities in the long run.

This action would slightly reduce catch compared to 2019–2021 landings (but would set a quota similar to expected 2022 catch), with the goal of creating a more productive stock. The reduction of catch in combination with the evidence that Atlantic mackerel is a small proportion of total revenues, provides the conclusion that this rule affects a substantial number of small entities, but is not expected to have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new information collection requirements, including reporting or recordkeeping requirements, contained in this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 26, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, revise paragraph (g)(1)(ii) and add paragraph (g)(1)(iii), and revise paragraph (g)(4) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(1) * * *

(ii) *Recreational possession.* Take and retain, possess, or land Atlantic mackerel in excess of the recreational limits contained in § 648.26(a)(3).

(iii) *Transfer and purchase.*

(A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish caught by a vessel that has not been issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish vessel permit, unless the vessel fishes exclusively in state waters.

(B) Transfer longfin squid, *Illex* squid, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterfish incidental catch permit.

* * * * *

(4) *Presumption.* For purposes of this part, the following presumption applies: All Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such species were purchased for bait or harvested by a vessel fishing exclusively in state waters or, for Atlantic chub mackerel, outside of the Atlantic Chub Mackerel Management Unit.

* * * * *

■ 3. In § 648.21, revise paragraph (c)(2) to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

* * * * *

(c) * * *

(2) The SSC may specify higher 2023–2032 ABCs for Atlantic mackerel based on $F_{REBUILD}$ instead of the methods outlined in paragraph (a) of this section to implement a rebuilding program that would rebuild this stock by 2032.

* * * * *

■ 4. In § 648.24, revise paragraphs (b)(1)(i) through (iii) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) * * *

(i) *First phase commercial closure.*

(A) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects before May 1 that 886 mt of the Atlantic mackerel DAH is remaining. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(B) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects on or after May 1 that 443 mt of the Atlantic mackerel DAH is remaining. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(C) Unless previously closed pursuant to paragraph (b)(1)(i)(A) or (b)(1)(i)(B) of

this section, NMFS will close the Tier 3 commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 Atlantic mackerel landings cap will be harvested. Unless otherwise restricted, the closure of the Tier 3 commercial Atlantic mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

(ii) *Second phase commercial quota closure.* When the Regional Administrator projects that 100 mt of the Atlantic mackerel DAH is remaining, NMFS will reduce the possession of Atlantic mackerel in the EEZ applicable to all commercial Atlantic mackerel permits for the remainder of the fishing year as specified in § 648.26(a)(2)(iii)(A).

(iii) NMFS has the discretion to not implement measures outlined in paragraphs (b)(1)(i)(B) or (b)(1)(ii) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

* * * * *

■ 5. In § 648.26, revise paragraph (a)(1)(i) introductory text, paragraphs (a)(1)(i) through (iv), and paragraph (a)(2), and add paragraph (a)(3) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

(1) *Initial commercial possession limits.* A vessel must be issued a valid limited access Atlantic mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel in or harvested from the EEZ per trip, provided the fishery has not been closed as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1 limited access mackerel permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(ii) A vessel issued a Tier 2 limited access mackerel permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iii) A vessel issued a Tier 3 limited access mackerel permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, or 90 percent of the Tier 3 landings cap has been harvested, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iv) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

* * * * *

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before a first phase or second phase commercial fishery closure, then the Atlantic mackerel possession restrictions specified in § 648.26(a)(2)(iii)(B) shall remain in place for the rest of the fishing year unless further reduced by the possession restrictions specified in § 648.26(a)(2)(iii)(A).

(i) *Limited Access Fishery.*

(A) During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 886 mt of the DAH is remaining before May 1 or when 443 mt of the DAH is remaining on or after May 1, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) During a closure of the Tier 3 commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(C), when 90 percent of the Tier 3 landings cap is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial sector pursuant to § 648.24(b)(1)(i), when 886 mt of the DAH is remaining before May or when 443 mt of the DAH is remaining on or after May 1, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iii) *Entire commercial fishery.*

(A) *Commercial quota closure.* During a closure of the entire commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(ii), when 100 mt of the DAH is remaining, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(3) *Recreational possession limits.* The recreational Atlantic mackerel possession limit for charter/party and private recreational anglers is 20 Atlantic mackerel per person per trip, including for-hire crew.

* * * * *

[FR Doc. 2022–23751 Filed 11–1–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BL54

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 124 to the BSAI FMP for Groundfish and Amendment 112 to the GOA FMP for Groundfish To Revise IFQ Program Regulations

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 124 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 112 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) to the Secretary of Commerce for review. If approved, Amendment 124 to the BSAI FMP and Amendment 112 to the GOA FMP would authorize the use of jig gear in the sablefish individual fishing quota (IFQ) and community development quota (CDQ) programs. Amendment 124 would also remove the residency requirements for Community Quota Entity (CQE). These amendments are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

DATES: Submit comments on or before January 3, 2023

ADDRESSES: You may submit comments on this document, identified by [NOAA–NMFS–2022–0092], by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter [NOAA–NMFS–2022–0092] in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the FMP Amendments, the Environmental Assessment/Regulatory Impact Review (herein referred to as the ''Analysis''), and the Finding of No significant Impact (FONSI) prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228 or *abby.jahn@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries of the BSAI under the BSAI FMP and the GOA under the GOA FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP and GOA FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment prepared to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a FMP amendment, immediately publish a document in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that the proposed amendments are available for public review and comment.

Amendment 124 to the BSAI FMP would authorize jig gear for the harvest of sablefish IFQ and CDQ in the BSAI. Amendment 112 to the GOA FMP would authorize jig gear for the harvest of sablefish IFQ and CDQ in the GOA. These FMP revisions specific to the IFQ Program and CDQ Program would increase allowable gear types for fishery participants and provide an additional opportunity for entry-level participation. These FMP revisions would also provide consistency across fixed gear terminology for both FMPs so that it is clear that jig gear is an allowable gear type and is a separate category from other fixed gear types.

Amendment 124 to the BSAI FMP would also remove reference to specific residency requirement and lease provisions for the CQE Program and defer to regulations. This would allow any future regulatory changes to be implemented without an FMP amendment.

Amendment 124 to the BSAI FMP would amend Section 3.2.4.3 of the FMP to authorize jig gear to harvest sablefish in the BSAI sablefish IFQ and CDQ fisheries. This amendment would add jig gear to the list of fixed gear types. Section 3.7.1.8.4 would be revised to remove the reference to residency requirements for leasing quota share (QS) and adding a sentence which defers to regulations for CQEs that both own and wish to lease QS.

Amendment 112 to the GOA FMP would amend Table ES–2, Section 3.2.3.4.3.3.1, 3.4.2, 3.7.1.1, and 4.1.2.3 to authorize jig gear to harvest sablefish in the GOA sablefish IFQ and CDQ fisheries. This amendment would add jig gear as a separate gear category from longline gear for consistency with the BSAI FMP and regulations. These amendments are necessary to provide entry-level fishing opportunities for fishery participants, provide consistency across FMPs and in regulations, and defer to regulations for residency requirements for leasing CQE.

The Council's intent to authorize jig gear as a legal gear type for the harvest of sablefish IFQ and CDQ is to provide an entry-level opportunity for fishery participants to harvest sablefish IFQ and CDQ. Vessels that use jig gear contribute to a diversified fishing portfolio for combination fishing vessels in coastal communities. Most jig vessels target Pacific cod followed by rockfish. The majority of jig harvested groundfish occurs in the GOA, however, authorizing jig gear for the harvest of sablefish could increase its use in the BSAI. Amendment 124 to the BSAI and Amendment 112 to the GOA would provide fishery participants the opportunity to use jig gear to harvest sablefish IFQ and align FMPs and regulations for consistency and clarity.

The Council's intent to remove the Adak CQE residency requirement for a period of 5 years is to create additional opportunities for the Adak CQE to fully harvest its allocation. The exception would allow the Adak CQE, the Adak Community Development Corporation (ACDC) to lease QS to non-residents on an annual basis to increase utilization of CQE held QS and stimulate a stable fishing economy in the community. Amendment 124 to the BSAI FMP

would provide flexibility if regulations for the Adak CQE residency requirements are recommended for revisions in the future because an FMP amendment would no longer be required.

NMFS is soliciting public comments on the proposed amendments through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement these amendments, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act and the Halibut Act. All comments received by the end of the comment period on these amendments, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the approval/disapproval decision on these amendments. Comments received after that date may not be considered in the approval/disapproval decision on these amendments. To be certain of consideration, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: October 28, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–23849 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 87, No. 211

Wednesday, November 2, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–161–2022]

Approval of Subzone Status; BLG Logistics of Alabama LLC, Northport, Alabama

On September 7, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of Birmingham, grantee of FTZ 98, requesting subzone status subject to the existing activation limit of FTZ 98, on behalf of BLG Logistics of Alabama LLC, in Northport, Alabama.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 55993, September 13, 2022). 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 400.36(f)), the application to establish Subzone 98H was approved on October 27, 2022, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 98's 612-acre activation limit.

Dated: October 27, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–23809 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–835]

Furfuryl Alcohol From the People's Republic of China: Final Results of Expedited Fifth Sunset Review of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on furfuryl alcohol from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the dumping margins identified in the ''Final Results of Review'' section of this notice.

DATES: Applicable November 2, 2022.

FOR FURTHER INFORMATION CONTACT: Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1678.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2022, Commerce published the notice of initiation of the fifth sunset review of the *Order,*[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On July 11, 2022, Penn A Kem, LLC (PennAKem), a domestic interested party (formerly known as Penn Specialty Chemicals, Inc. and Great Lakes Chemical, the former petitioner in the underlying investigation), timely notified Commerce of its intent to participate within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] On August 1, 2022, Commerce received a complete substantive response from PennAKem within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] Commerce received no substantive responses from respondent interested parties. Based on the notice of intent to participate and adequate response filed by PennAKem, and the lack of response from any respondent interested party, Commerce conducted an expedited sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheadings 2932.13.00 and 3824.99.9397 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the accompanying Issues and Decision Memorandum.[5] The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the *Order* were revoked. 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.* A complete version of the Issues and Decision Memorandum can be accessed at

[1] *See Notice of Antidumping Duty Order: Furfuryl Alcohol from the People's Republic of China (PRC),* 60 FR 32302 (June 21, 1995) (*Order*).

[2] *See Initiation of Five-Year* (*Sunset*) *Reviews,* 87 FR 39459 (July 1, 2022).

[3] *See* PennAKem's Letter, ''Sunset Review (5th Review) of the Antidumping Duty Order on Furfuryl Alcohol from the People's Republic of China: Domestic Interested Party Notification of Intent to Participate,'' dated July 11, 2022.

[4] *See* PennAKem's Letter, ''Fifth Sunset Review of the Antidumping Duty Order on Furfuryl Alcohol from the People's Republic of China; Domestic Interested Party Substantive Response to the Notice of Initiation,'' dated August 1, 2022.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Expedited Fifth Sunset Review of the Antidumping Duty Order on Furfuryl Alcohol from the People's Republic of China,'' dated concurrently, and hereby adopted by, with this notice.

https://access.trade.gov/public/FRNotices/ListLayout.aspx.

Final Results of the Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the antidumping duty order on furfuryl alcohol from China would be likely to lead to a continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be up to 50.43 percent.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: October 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–23826 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967, C–570–968]

Aluminum Extrusions From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (China), would likely lead to a continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable November 2, 2022.

FOR FURTHER INFORMATION CONTACT: Carolyn Adie (AD) or Frank Schmitt (CVD), 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) 482–6250 or (202) 482–4880, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On May 26, 2011, Commerce published the *AD Order* and the *CVD Order* on aluminum extrusions from China (collectively, the *Orders*).[1] On March 1, 2022, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), Commerce published the initiation of the second sunset reviews of the *Orders* and the ITC instituted its review of the *Orders*.[2] As a result of its reviews, Commerce determined that revocation of the *AD Order* would likely lead to a continuation or recurrence of dumping and that revocation of the *CVD Order* would likely lead to the continuation or recurrence of countervailable subsidies. Commerce, therefore, notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[3]

On October 21, 2022, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched,

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (*AD Order*); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (*CVD Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 11416 (March 1, 2022); and *Aluminum Extrusions from China; Institution of Five-Year Reviews,* 87 FR 11470 (March 1, 2022).

[3] *See Aluminum Extrusions from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 87 FR 40509 (July 7, 2022), and accompanying Issues and Decision Memorandum (IDM); *see also Aluminum Extrusions from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order;* 87 FR 40501 (July 7, 2022), and accompanying IDM.

[4] *See* USITC Publication 5375 (October 2022), and *Aluminum Extrusions from China,* 87 FR 64113 (October 21, 2022).

bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation. The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a ''finished goods kit.'' A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ''as is'' into a finished product. An imported product will not be considered a ''finished goods kit'' and therefore excluded from the scope of the *Orders* merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (''mm'') or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Also excluded from the scope of the *Orders* is certain rectangular wire produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire. The product is made from aluminum alloy grade 1070 or 1370, with no recycled metal content allowed. The dimensions of the wire are 5 mm (+/- 0.05 mm) in width and 1.0 mm (+/- 0.02 mm) in thickness. Imports of rectangular wire are provided for under HTSUS category 7605.19.000.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.81.00, 7604.21.00.00, 7604.21.00.10, 7604.21.00.90, 7604.29.10.00, 7604.29.10.10, 7604.29.10.90, 7604.29.30.10, 7604.29.30.50, 7604.29.30.60, 7604.29.30.90, 7604.29.50.30, 7604.29.50.60, 7604.29.50.50, 7604.29.50.90, 7606.12.30.91, 7606.12.30.96, 7608.20.00.30, 7608.20.00.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.20.15, 7615.10.20.25, 7615.10.30, 7615.10.30.15, 7615.10.30.25, 7615.10.50.20, 7615.10.50.40, 7615.10.71, 7615.10.71.25, 7615.10.71.30, 7615.10.71.55, 7615.10.71.80, 7615.10.91, 7615.10.91.00, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7615.20.00.00, 7616.10.90.90, 7616.99.10, 7616.99.50, 7616.99.51, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8424.90.90.80, 8473.30.20.00, 8473.30.51.00, 8479.89.94, 8479.89.98, 8479.90.85.00, 8479.90.94, 8481.90.90.60, 8481.90.90.85, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8513.90.20, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8541.90.00.00, 8543.90.88.80, 8543.90.88.85, 8708.10.30.50, 8708.29.50.60, 8708.29.51.60, 8708.80.65.90, 8708.99.68.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9031.90.90.95, 9031.90.91.95, 9401.90.50.81, 9401.99.90.81, 9403.10.00, 9403.20.00, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9403.99.10.40, 9403.99.90.10, 9403.99.90.15, 9403.99.90.20, 9403.99.90.41, 9405.99.40.20, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90,

9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.30.80.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders* on aluminum extrusions from China. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year (sunset) reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: October 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–23810 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–874]

Certain Hot-Rolled Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Administrative Review: 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that producers and exporters of hot-rolled steel flat products (hot-rolled steel) from Japan, sold subject merchandise in the United States at prices below normal value during the period of review (POR) October 1, 2020, through September 30, 2021.

DATES: Applicable November 2, 2022.

FOR FURTHER INFORMATION CONTACT: Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1396.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on hot-rolled steel from Japan in accordance with section 751(a)(1)(B) of Tariff Act of 1930, as amended (the Act).[1] Commerce initiated this administrative review on November 29, 2021, covering two producers and/or exporters.[2] We selected one of these companies, NSC,[3] as the mandatory respondent.[4] On June 13, 2022, we extended the deadline for the preliminary results of this review by an additional 117 days, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), until October 28, 2022s.[5] For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise covered by the *Order* is hot-rolled steel from Japan. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[7]

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Act. Export price and constructed export price were calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rate for Non-Examined Company

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of

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[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 29, 2021).

[3] NSC is a single entity comprised of the following companies: Nippon Steel Corporation; Nippon Steel Nisshin Co., Ltd.; and Nippon Steel Trading Corporation. *See Certain Hot-Rolled Steel Flat Products from Japan: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 46713 (September 5, 2019).

[4] *See* Memorandum, ''Respondent Selection for the 2020–2021 Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from Japan,'' dated February 23, 2022.

[5] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from Japan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review—2020–2021,'' dated June 13, 2022.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Reviews: Certain Hot-Rolled Steel Flat Products from Japan; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *Id.*

the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available.

In this review, we have preliminarily calculated a weighted-average dumping margin for NSC that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to the company not individually examined, Tokyo Steel Manufacturing Co., Ltd., a margin of 7.81 percent, which is NSC's calculated weighted-average dumping margin.

Preliminary Results

We preliminarily determine the following weighted-average dumping margins for the period October 1, 2020, through September 30, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Nippon Steel Corporation/Nippon Steel Nisshin Co., Ltd./Nippon Steel Trading Corporation	7.81
Tokyo Steel Manufacturing Co., Ltd	7.81

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for NSC is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If NSC's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [8]

For entries of subject merchandise during the POR produced by NSC for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[9] For the companies which were not selected for individual examination, we intend to assign an assessment rate based on the methodology described in the ''Rate for Non-Examined Company'' section above.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.58 percent, the all-others rate established in the less-than-fair-value investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS [13] and must be served on interested parties.[14] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed via ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[16] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. If a request for

[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See Order.*

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See generally* 19 CFR 351.303.

[14] *See* 19 CFR 351.303(f).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* 19 CFR 351.310(c).

a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[17] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[18]

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Rate for Non-Examined Company
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2022–23827 Filed 11–1–22; 8:45 am]

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[17] *See* 19 CFR 351.310(d).

[18] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Call for Nominations To Serve on the NIST Safety Commission

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST) intends for a new federal advisory committee to be established, the NIST Safety Commission (Commission). The Commission would provide advice to the NIST Director on matters relating to NIST safety policies; safety management system, practices, and performance; and safety culture. NIST invites and requests nominations of individuals for appointment to the Commission. Registered federal lobbyists may not serve on NIST federal advisory committees in an individual capacity.

DATES: Nominations to serve on the Commission must be submitted by 5 p.m. eastern time on November 17, 2022. After initial members are appointed, nominations for the Commission will be accepted on an ongoing basis and will be considered if vacancies arise.

ADDRESSES: Please submit nominations to Alicia Chambers, Committee Liaison Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899 or via email to *alicia.chambers@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. S. Shyam Sunder, Director of the Special Programs Office and Chief Data Officer, National Institute of Standards and Technology, at 301–975–6713 or *sunder@nist.gov.*

SUPPLEMENTARY INFORMATION:

Commission Information

The NIST Director intends for a new federal advisory committee to be established, the NIST Safety Commission (Commission). The Commission would provide advice to the NIST Director on matters relating to NIST safety policies; safety management system, practices, and performance; and safety culture. It is anticipated that the Commission would carry out its activities over the period of one year, and convene approximately three times. The Commission would function solely as an advisory body, in accordance with the provisions of Federal Advisory Committee Act, as amended, 5 U.S.C. app. The Commission would be tasked with assessing the state of NIST's safety culture and how effectively the existing safety protocols and policies have been implemented across NIST. The Commission may consider:

a. the quality and completeness of NIST safety directives and programs;

b. the performance of safety protocols; and

c. the impacts of the pandemic and hybrid work environment on safety.

The Commission would submit oral and written reports to the NIST Director on its findings, including an oral briefing of its preliminary findings within 75 days of beginning its activities, and written findings within 150 days of beginning its activities.

Members of the Commission would be appointed by the Director of NIST. The Commission would be composed of not more than seven members who are qualified to provide advice to the NIST Director on matters relating to safety policies; safety management system, practices, and performance; and safety culture.

Commission membership would be balanced fairly and drawn from industry, academia, federal laboratories, and other relevant sectors. Membership would also consider balance among the broad diversity of disciplinary specialties represented in the NIST Laboratories, including the physical sciences; chemical, biological, and materials sciences and engineering; structural engineering and fire research; manufacturing and mechanical engineering; and information and communication technologies. NIST will consider candidates with established records of distinguished service who are either a current or former member of the NIST Visiting Committee on Advanced Technology, a member of the first or second NIST Blue Ribbon Commission on Management and Safety, or a qualified expert with public or private sector experience in one or more of the following areas: (a) management and organizational structure; (b) laboratory management and safety (c) safety training and operations; (d) hazardous materials safety and security; (e) emergency medical response; and (f) organizational safety culture.

Each member would serve for the duration of the Commission. Members would serve in their personal capacities as Special Government Employees (SGEs) as that term is defined in 18 U.S.C. 202. SGEs are subject to conflict-of-interest laws and regulations, including (but not limited to) the obligation to annually file a New Entrant Confidential Financial Disclosure Report (OGE Form 450) and complete ethics training. Members of the Commission who are full-time or permanent part-time federal officers or employees would be appointed pursuant to 41 CFR 102.3.130(h) to serve as Regular Government Employee (RGE) members. Members would be individually advised of the capacity in which they will serve through their appointment letters.

The Director of NIST would appoint the Commission Chair and a Vice-Chair

to serve in the absence of the Chair from among the Commission membership. Both members would serve in those capacities for the duration of the Commission, at the pleasure of the Director.

Commission members would, upon request, be reimbursed for travel and per diem as it pertains to official business of the Commission in accordance with 5 U.S.C. 5701 *et seq.* Commission members would serve without compensation, except that federal government employees who are members of the Commission would remain covered by their compensation system pursuant to 41 CFR 102–3.130(h).

Members would not be permitted to reference or otherwise utilize their membership on the Commission in connection with public statements made in their personal capacities without a disclaimer that the views expressed are their own and do not represent the views of the Commission, NIST, the Department of Commerce, or the U.S. Government.

Nomination Information

1. Nominations are sought from all fields, sectors, and perspectives described above.

2. Each member should be a qualified expert with public or private sector experience in one or more of the following areas: (a) management and organizational structure; (b) laboratory management and safety; (c) safety training and operations; (d) hazardous materials safety and security; (e) emergency medical response; or (f) organizational safety culture. The field of eminence for which the candidate is qualified should be specified in the nomination letter. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the candidate acknowledges the responsibilities of serving and will actively participate in good faith in the tasks of the Commission, as appropriate. Third-party nomination letters should state that the candidate agrees to the nomination.

3. NIST seeks a diverse Commission membership.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–23825 Filed 11–1–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC247]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Relocation of National Oceanic and Atmospheric Administration Research Vessels at Naval Station Newport, Rhode Island

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Navy on behalf of NOAA Office of Marine and Aviation Operations (OMAO) for authorization to take marine mammals incidental to construction activities associated with the relocation of NOAA research vessels at Naval Station Newport in Rhode Island. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 2, 2022.

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.taylor@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 would 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: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment 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 the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On May 6, 2022, NMFS received a request from the U.S. Navy on behalf of OMAO for an IHA to take marine mammals incidental to construction activities associated with the relocation of NOAA research vessels to the Naval Station Newport in Rhode Island. NMFS reviewed the Navy's application and the Navy provided a revised application on July 14, 2022. The application was deemed adequate and complete on October 5, 2022. OMAO's request is for take of 7 species of marine mammals, by Level B harassment and, for a subset of these species, Level A harassment. Neither OMAO nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. OMAO plans to commence in-water construction activities on February 1, 2024 yet has requested the IHA in advance due to OMAO's NEPA requirements.

Description of Proposed Activity

Overview

OMAO proposes to establish adequate pier, shore side, and support facilities for four NOAA research vessels in Coddington Cove at Naval Station (NAVSTA) Newport in Newport, Rhode Island. As part of the proposed activity, a new pier, trestle, small boat floating dock, and bulkhead would be constructed in Coddington Cove in order to meet NOAA docking/berthing requirements for these four vessels. These construction activities would involve the use of impact and vibratory pile driving, vibratory pile extraction, rotary drilling, and down-the-hole (DTH) mono-hammer excavation events, which have the potential to take marine mammals, by Level A and Level B harassment. The project would also include shore side administrative, warehouse, and other support facilities.

Currently two of the four Rhode Island NOAA research vessels are located at Pier 2 at NAVSTA Newport; however, Pier 2 does not provide adequate docking and berthing for these vessels to meet NOAA requirements. The two other NOAA Atlantic Fleet vessels are located in New Hampshire, Virginia, South Carolina, or Mississippi. As many of the NOAA research cruises are conducted in the northeast, relocating four vessels to the project area provides logistical advantages and operational efficiencies.

Coddington Cove, which opens to Narragansett Bay, covers an area of approximately 395 acres (1.6 square kilometers) and is located near the southeast corner of NAVSTA Newport. Construction activities would last for approximately 1 year from February 1, 2024 to January 31, 2025 of which in-water work would take place over 343 non-consecutive days.

Dates and Duration

In-water construction activities are estimated to occur over 343 non-consecutive days from February 1, 2024 to January 31, 2025. OMAO anticipates that all work would be limited to daylight hours. Specific construction activities may occur concurrently over a period of approximately 138 days. Table 1 provides a summary of proposed scenarios in which equipment may be used concurrently.

TABLE 1—SUMMARY OF MULTIPLE EQUIPMENT SCENARIOS

Structure	Activity	Equipment and quantity
Bulkhead	Template installation (16-inch steel) and steel pipe pile installation (18-inch).	Vibratory Hammer (2). Vibratory Hammer (1), Impact Hammer (1). Vibratory Hammer (2), DTH Mono-hammer (1).
Bulkhead and Trestle	Template extraction from Bulkhead (16-inch steel), Install sheet piles Bulkhead (Z26–700), Install steel pipe piles at Trestle (18-inch).	Vibratory Hammer (3). Vibratory Hammer (1), Impact Hammer (1), Rotary Drill (1). Vibratory Hammer (2), Impact Hammer (1), Rotary Drill (1).
Pier	Template Install (16-inch steel) and Install steel pipe piles (30-inch) at Pier.	Vibratory Hammer (2). Vibratory Hammer (1), Impact Hammer (1) Vibratory Hammer (1), Impact Hammer (1), Rotary Drill (1).
Pier fender piles, gangway, and floating dock	Install pipe piles (16-inch) at Pier and install steel pipe piles at Small Boat Floating Dock (18-Inch).	Vibratory Hammer (2) Vibratory Hammer (1), Impact Hammer (1).

TABLE 1—SUMMARY OF MULTIPLE EQUIPMENT SCENARIOS—Continued

Structure	Activity	Equipment and quantity
	Template Extraction from Pier (16-inch steel) and install shafts (36-inch) at Small Boat Floating Dock.	Vibratory Hammer (2), Impact Hammer (1). Vibratory Hammer (1), Impact Hammer (1). Vibratory (2), DTH Monohammer (1).

Specific Geographic Region

NAVSTA Newport encompasses 1,399 acres (5.66 (square kilometers) km^2) extending 6–7 miles (9.7–11.3 kilometers (km)) along the western shore of Aquidneck Island in the towns of Portsmouth and Middletown, Rhode Island and the city of Newport, Rhode Island. The base footprint also includes the northern third of Gould Island in the town of Jamestown, Rhode Island. The base is located in the southern part of the state where Narragansett Bay adjoins the Atlantic Ocean. Figure 1 shows the site of where the proposed action would occur in Coddington Cove.

Coddington Cove covers an area of approximately 395 acres (1.6 km^2) and is partially protected by Coddington Point to the south and a breakwater to the north. The northwest section of the cove opens to Narragansett Bay. Water depths in the proposed project area of Coddington Cove are less than 34 ft (10.4 m) mean lower low water. The proposed project area experiences semi-diurnal tides, an average water temperature of 36–68 °F (2.2–20 °C), and salinity of 31 parts per thousand. Narragansett Bay is approximately 22 nautical miles (nm) (40 km) long and 7 nm (16 km) wide. Narragansett Bay's most prominent bathymetric feature is a submarine valley that runs between Conanicut and Aquidneck Islands to Rhode Island Sound, and defines the East Passage of Narragansett Bay. The shipping channel in the East Passage serves as the primary shipping channel for the rest of Narragansett Bay and is generally 100 ft (30.5 m) deep. The shipping channel from the lower East Passage splits just south of Gould Island with the western shipping channel heading to Quonset Point and the eastern shipping channel heading to Providence and Fall River (Navy, 2008). Vessel noise from commercial shipping and recreational activities contribute to the ambient underwater soundscape in the proposed project area. Based upon underwater noise data collected at the Naval Undersea Warfare Center (NUWC) and the shallow depth of nearshore water, the ambient underwater noise in the proposed project area is expected to be approximately 120 dB RMS.

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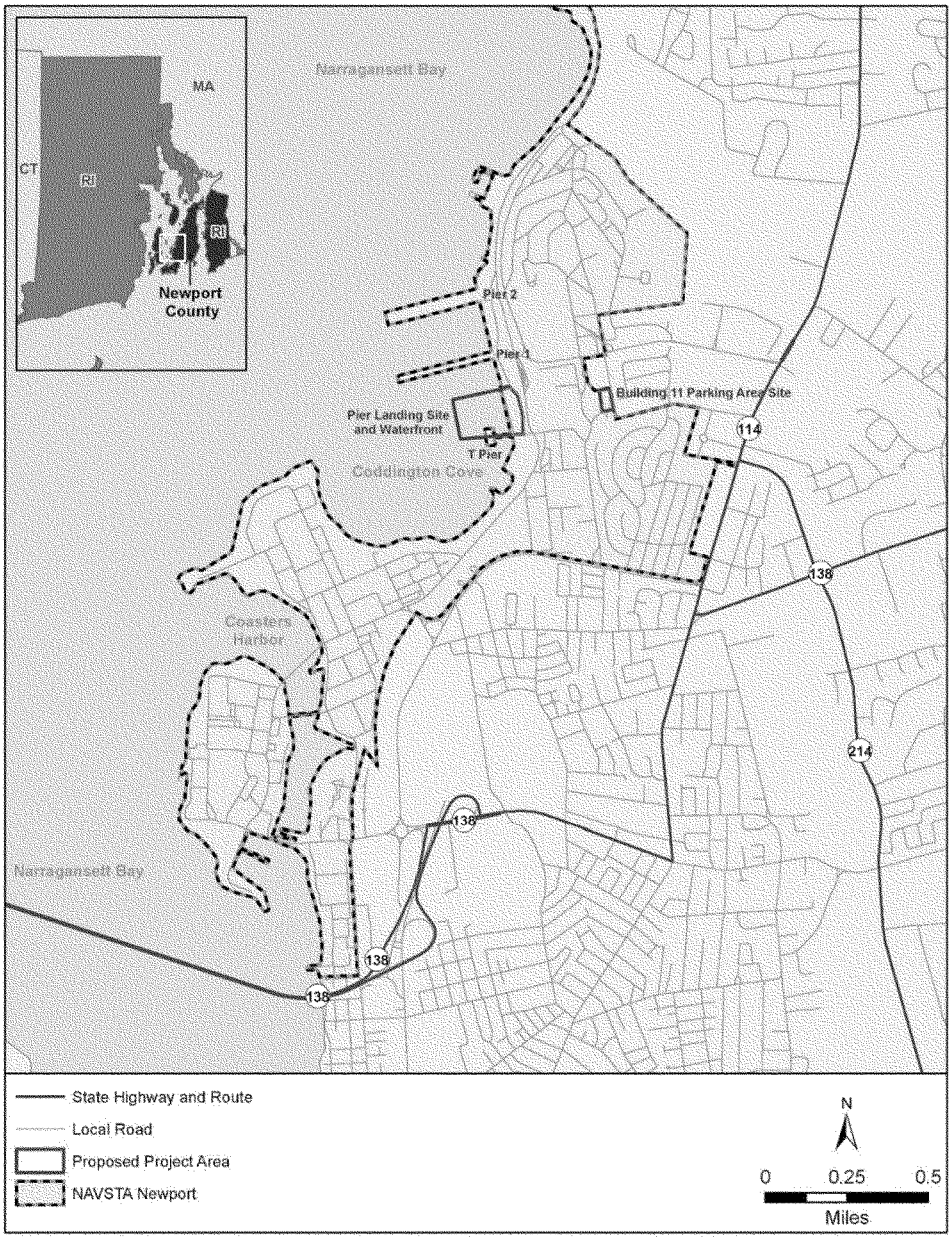

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Figure 1. Proposed NAVSTA Project Area

Detailed Description of the Specified Activity

The proposed activity would establish adequate pier, shore side, and support facilities to support the relocation of four NOAA Atlantic Fleet research vessels at NAVSTA Newport, RI. This includes the construction of a new pier, trestle, small boat floating dock, bulkhead, and shore side facilities in Coddington Cove for which the in-water schedule is shown in Table 2. Upland construction at the Pier landing and parking facilities near Building 11 (Figure 1) would not involve any in-water work and is not expected to result in any takes of marine mammals; these activities are therefore not further discussed.

TABLE 2—PROPOSED IN-WATER WORK SCHEDULE

Facility	Construction period	Pile type and diameter (in)	Number of piles	Method of pile driving/extraction	Daily production rate	Minutes to drive/ extract/ drill a single pile	Number of impact strikes/pile	Total production days [1]
Abandoned guide piles along bulkhead.	February 2024	12″ steel	3	Vibratory extraction	3 piles/day	30	N/A	1
Floating dock demolition.	February 2024	12″ timber	4	Vibratory extraction	4 piles/day	30	N/A	1
Bulkhead Construction	February–April 2024	18″ steel	115	Vibratory/impact	8 piles/day	30	1,000	15

TABLE 2—PROPOSED IN-WATER WORK SCHEDULE—Continued

Facility	Construction period	Pile type and diameter (in)	Number of piles	Method of pile driving/extraction	Daily production rate	Minutes to drive/ extract/ drill a single pile	Number of impact strikes/pile	Total production days [1]
			12	DTH Mono-hammer [2 3].	1 hole/day	300	13	12
		Steel sheet pile Z26–700, 18″ deep.	230 (115 pairs).	Vibratory	8 pairs/day	30	N/A	15
		16 template steel pile	60 (4x 15 moves).	Vibratory installation/ extraction.	4 piles/day	30	N/A	30
Trestle bents 1–18	April–June 2024 *	18″ steel pipe pile	36	Vibratory/impact	2 piles/day	30	1,500	18
			4	Rotary drilling [4]	1 hole/day	300	N/A	4
		16″ template steel pipe pile.	72 (4x 18 moves).	Vibratory installation/ extraction.	4 piles/day	30	N/A	36
Trestle bent 19	June 2024	30″ steel pipe pile	2	Vibratory/impact	2 piles/day	45	2,000	1
		16″ template steel pipe pile.	4 (4x 1 moves).	Vibratory installation/ extraction.	4 piles/day	30	N/A	2
Pier	June–December 2024 **.	30″ steel pipe pile	120	Vibratory/impact	4 piles/day	45	2,000	30
			12	Rotary drilling [4]	1 hole/day	300	N/A	12
		16″ template steel pipe pile.	120 (4x 30 moves).	Vibratory installation/ extraction.	4 piles/day	30	N/A	60
Fender Piles	September 2024–January 2025 **.	16″ steel pipe pile	201	Vibratory	4 piles/day	20	N/A	50
		16″ template steel pipe pile.	96 (4x 24 moves).	Vibratory installation/ extraction.	4 piles/day	30	N/A	48
Gangway support piles for small boat floating dock.	January 2025 **	18″ steel pipe piles	4	Vibratory/impact	2 piles/day	30	1,000	2
Small floating dock	January 2025 **	36″ steel casing shaft with rock socket (guide pile).	2	Vibratory/impact	1 pile/day	60	1,000	2
			2	DTH Mono-hammer [2 3 5].	1 hole/day	300	13 strikes/ second	2
		16″ template steel pipe pile.	4 (4x 1 moves).	Vibratory installation/ extraction.	4 piles/day	30	N/A	2

* Pile installation at Bulkhead and Trestle may be concurrent.
** Pile installation of Fender piles, Gangway, and Floating Dock may be concurrent.
[1] Total production days for template piles includes the time to install and the time to extract the piles.
[2] ''Down-the-hole'' (DTH) mono-hammer excavation may be used to clear boulders and other hard driving conditions for pipe piling at the bulkhead. DTH mono-hammer would only be used when obstructions or refusal (hard driving) occurs that prevents the pile from being advanced to the required tip elevation using vibratory/ impact driving. The DTH mono-hammer is placed inside of the steel pipe pile and operates at the bottom of the hole to clear through rock obstructions, hammer does not ''drive'' the pile but rather cleans the pile and removes obstructions such that the piles may be installed to ''minimum'' tip elevation.
[3] DTH mono-hammer uses both impulsive (strikes/second) and continuous methods (minutes).
[4] Rotary drilling may be used to clear boulders/obstructions for trestle and pier. Core barrel would be lowered through the pile and advanced using rotary methods to clear the obstruction. After the obstruction is cleared, the piling would be advanced to the required tip elevation using impact driving methods.
[5] DTH mono-hammer would be used to create a rock socket at each of the 36-inch shafts for the floating dock.

Pier and Trestle: A new pile supported concrete pier would be constructed approximately 450 ft (137.1 m) north of the existing T-pier in Coddington Cover (Figure 1). The new pier would be approximately 62 ft (18.9 m) wide and and 587 ft (178.9 m) long, encompassing an area of 36,400 square ft (ft^2, 3,381.6 m^2). Structural support piles for the new pier would consist of 120 30″ steel pipe piles. These piles would be driven by vibratory and impact hammers to a depth required to achieve bearing capacity. A rotary drill may be used to clear any obstructions, such as glacial boulders. Fender piles would be installed and consist of 201 16″ diameter steel pipe piles.

In order to access the pier, a 28 ft (8.5 m) wide by 525 ft (160 m) long pile-supported trestle would be constructed. The trestle would cover an area of approximately 14,200 ft^2 (1,319.2 m^2) over the water. The entrance to the trestle would be located upland and span over two existing bulkheads, a sheet pile bulkhead, and a new bulkhead connected to the pier. Structural support piles for the trestle concrete deck would include 36 18″ steel pipe piles and 2 30″ steel pipe piles. The piles would be driven by impact and vibratory hammers to depths required to achieve bearing capacity. If construction crews encounter obstructions, such as glacial boulders, a rotary drill may be used.

Trestle and pier piles would be installed using a template that would be secured by 4 16″ steel pipe piles. Once the pier or trestle piles are installed in the template, the template would be removed and relocated to the next section of the pier/trestle construction. The template piles would be installed and removed by vibratory installation and extraction. Use of the template would require the driving and removal of the template piles approximately 19 times for the trestle and 30 times for the pier, for a total of 196 installation/ extraction moves of the pipe piles.

Small Boat Floating Dock: A small boat floating dock would be constructed northwest of the pier and trestle structure. The dock would be approximately 20 ft (6.1 m) wide by 66 ft (20.1 m) long, and provide berthing on two sides. The floating system would consist of a single heavy duty 20 ft (6.1 m) by 66 ft (20.1 m) concrete float of approximately 1,300 ft^2 (120.8 m^2) and two 5.5 ft (1.7 m) wide by 80 ft (24.3 m) long gangway segments of approximately 440 ft^2 (40.9 m^2) each. The gangway would be supported by 4 18″ steel pipe piles. These piles would be driven by vibratory installation followed by impact installation to achieve bearing capacity. Two 36″ steel pipe guide piles would provide lateral support to the floating dock. The guide piles would be rock socketed into the bedrock. Shafts would be installed using vibratory and impact driving methods, then set into rock socket anchors and filled with concrete. DTH excavation using a mono-hammer would be used to

create the rock sockets. Additionally, an abandoned dock currently exists at the proposed site of the floating dock. Demolition of the abandoned dock involving the vibratory extraction of 3 12″ steel pipe piles and 4 12″ timber piles would take place before the small boat floating dock would be installed.

Bulkhead: In order to reinforce and stabilize an existing deteriorating bulkhead, a new bulkhead of approximately 728 ft (221.9 m) in length would be constructed near the proposed new pier location. A combination of approximately 115 18″ steel pipe piles and 230 steel Z-shaped sheet piles (55″ long and 8″ deep) would be installed along the face of the existing bulkhead using vibratory and impact driving. If obstructions, such as solid bedrock, boulders, or debris are encountered, pile installation may require the use of DTH mono-hammer excavation to break up rock or moving the obstruction aside using mechanical means. Piles would be installed using a template that would be secured by 4 16″ steel pipe piles. The use of the template would require the vibratory driving and extraction of the 4 template piles approximately 15 times for a total of 60 installation/extraction moves of the pipe template piles.

Pile installation and removal would occur using barge-mounted cranes and land-based cranes equipped with vibratory and impact hammers. Piles would initially be installed using vibratory methods, then finished with impact hammers as necessary. Impact hammers would also be used where obstructions or sediment conditions do not permit the efficient use of vibratory hammers. Rotary drilling may be used to clear obstructions during pile driving. DTH mono-hammer excavation combines the use of rotary drilling and percussive hammering to fracture rock. This method may also be used to clear obstructions in addition to set piles in rock sockets. Piles would be driven using a vibratory pile driver whenever possible in order to reduce impacts.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for these activities, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or 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' stock abundance estimates represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2022). All values presented in Table 3 are the most recent available at the time of publication (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 3—MARINE MAMMAL SPECIES [4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea—Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Atlantic white-sided dolphins.	*Lagenorhynchus acutus*	Western North Atlantic	-, -, N	93,233 (0.71, 54,443, 2016).	544	27
Common dolphins	*Delphinus delphis*	Western North Atlantic	-, -, N	172,974 (0.21, 145,216, 2016).	1,452	390
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31, 74,034, 2016).	851	164
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Western North Atlantic	-, -, N	61,336 (0.08, 57,637, 2018).	1,729	339
Gray Seal	*Halichoerus grypus*	Western North Atlantic	-, -, N	27,300 (0.22, 22,785, 2016).	1,389	4,453
Harp Seal	*Pagophilus groenlandicus*	Western North Atlantic	-, -, N	7.6 M (UNK, 7.1, 2019)	426,000	178,573

TABLE 3—MARINE MAMMAL SPECIES [4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Hooded Seal	*Cystophora cristata*	Western North Atlantic	-, -, N	593,500 (UNK, UNK, 2005).	UNK	1,680

[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; Nmin 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.

[4] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

As indicated above, all seven species (with seven managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While several species of whales have been documented seasonally in New England waters, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. The humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), sei (*Balaenoptera borealis*), sperm (*Physeter macrocephalus*) and North Atlantic right whales (*Eubaleana glacialis*) occur seasonally in the Atlantic Ocean, offshore of Rhode Island. However, due to the depths of Narragansett Bay and near shore location of the project area, these marine mammals are unlikely to occur in the project area. Therefore, OMAO did not request, and NMFS is not proposing to authorize takes of these species.

Atlantic White-Sided Dolphin

Atlantic white-sided dolphins occur in the temperate waters of the North Atlantic and specifically off the coast of North Carolina to Maine in U.S. waters (Hayes *et al.,* 2022). The Gulf of Maine population of white-sided dolphin primarily occurs in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. From January to May, this population occurs in low numbers from Georges Bank to Jeffreys Ledge (off New Hampshire) with even lower numbers south of Georges Bank. They are most common from June through September from Georges Bank to lower Bay of Fundy, with densities declining from October through December (Payne and Heinemann, 1990; Hayes *et al.,* 2022).

Since stranding recordings for the Atlantic white-sided dolphin began in Rhode Island in the late 1960s, this species has become the third most frequently recorded small cetacean. There are occasional unconfirmed opportunistic reports of white-sided dolphins in Narragansett Bay, typically in fall and winter. Atlantic white-sided dolphins in Rhode Island inhabit the continental shelf, with a slight tendency to occur in shallower water in the spring when they are most common (approximately 64 percent of records). Seasonal occurrence of Atlantic white-sided dolphins decreases significantly following spring with 21 percent of records in summer, 10 percent in winter, and 7.6 percent in fall (Kenny and Vigness-Raposa, 2010).

Mass strandings of up to 100 animals or more is common for this species. In an analysis of stranded marine mammals in Cape Cod and southeastern Massachusetts, Bogomolni *et al.* (2010) found that 69 percent of stranded white-sided dolphins were involved in mass stranding events with no significant cause determined, and 21 percent were classified as disease-related. Impacts from contaminants and pesticides, as well as climate-related changes, pose the greatest threats for Atlantic white-sided dolphins.

Common Dolphin

The common dolphin is one of the most widely distributed species of cetaceans, found world-wide in temperate and subtropical seas. In the North Atlantic, they are common along the shoreline of Massachusetts and at sea sightings have been concentrated over the continental shelf between the 100-meter (m) and 2000-m isobaths over prominent underwater topography and east to the mid-Atlantic Ridge. The common dolphin occurs from Cape Hatteras northeast to Georges Bank from mid-January to May and in the Gulf of Maine from mid-summer to autumn (Hayes *et al.,* 2022).

Strandings occur year-round. In the stranding record for Rhode Island, common dolphins are the second most frequently stranded cetacean (exceeded only by harbor porpoises) and the most common delphinid. There were 23 strandings in Rhode Island between 1972 and 2005 (Kenny and Vigness-Raposa, 2010). A short-beaked common dolphin was most recently recorded in Narragansett Bay in October of 2016 (Hayes *et al.,* 2022). There are no recent records of common dolphins far up rivers, however such occurrences would only show up in the stranding database if the stranding network responded, and there is no centralized clearinghouse for opportunistic sightings of that type. In Rhode Island, there are occasional opportunistic reports of common dolphins in Narragansett Bay up as far as the Providence River, usually in winter. The greatest threats for common dolphins include impacts from contaminants, anthropogenic sound, and climate change (Hayes *et al.,* 2022).

Harbor Porpoise

Harbor porpoises occur in northern temperate and subarctic coastal and offshore waters in both the Atlantic and Pacific Oceans. In the western North Atlantic, harbor porpoises occur in the northern Gulf of Maine and southern Bay of Fundy region in waters generally less than 150 m deep, primarily during the summer (July to September). During fall (October to December) and spring (April to June), harbor porpoises are widely dispersed between New Jersey and Maine. Lower densities of harbor porpoise occur during the winter (January to March) in waters off New York to New Brunswick, Canada (Hayes *et al.,* 2022).

Harbor porpoises are the most stranded cetacean in Rhode Island. Their occurrence is strongly seasonal and the highest occurrence is in spring at approximately 70 percent of all

records. Harbor porpoises may occur in Narragansett Bay during the winter, but reports are second- and third-hand anecdotal reports (Kenny, 2013). As harbor porpoises spend a significant amount of time in nearshore areas, harbor porpoises are vulnerable to contaminants, ship traffic, and physical habitat modifications in addition to fishery bycatch and sources of anthropogenic underwater noise (Hall *et al.,* 2006; Todd *et al.,* 2015; Oakley *et al.,* 2017; Hayes *et al.,* 2022).

Harbor Seal

Harbor seals occur in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above approximately 30°N (Burns, 2009). They are year-round residents in the coastal waters of eastern Canada and Maine (Katona *et al.,* 1993), occurring seasonally from southern New England to New Jersey from September through late May (Schneider and Payne, 1983; Schroeder, 2000; Rees *et al.,* 2016, Toth *et al.,* 2018). Harbor seals' northern movement occurs prior to pupping season that takes place from May through June along the Maine coast. In autumn to early winter, harbor seals move southward from the Bay of Fundy to southern New England and mid-Atlantic waters (Rosenfeld *et al.,* 1988; Whitman and Payne, 1990; Jacobs and Terhune, 2000; Hayes *et al.,* 2022). Overall, there are five recognized subspecies of harbor seal, two of which occur in the Atlantic Ocean. The western Atlantic harbor seal is the subspecies likely to occur in the proposed project area. There is some uncertainly about the overall population stock structure of harbor seals in the western North Atlantic Ocean. However, it is theorized that harbor seals along the eastern U.S. and Canada are all from a single population (Temte *et al.,* 1991; Anderson and Olsen, 2010).

Harbor seals are regularly observed around all coastal areas throughout Rhode Island, and occasionally well inland up bays, rivers, and streams. In general, rough estimates indicate that approximately 100,000 harbor seals occur in New England waters (DeAngelis, 2020). Seals are very difficult to detect during surveys, since they tend to be solitary and the usual sighting cue is only the seal's head above the surface. Available data on harbor seals in New England are strongly dominated by stranding records, which comprise 446 of 507 total records for harbor seals (88 percent) (Kenny and Vigness-Raposa, 2010). Of the available records, 52.5 percent are in spring, 31.2 percent in winter, 9.5 percent in summer, and 6.9 percent in fall. In Rhode Island, there are no records offshore of the 90-meter isobath. Based upon seasonal monitoring in Rhode Island, seals begin to arrive in Narragansett Bay in September, with numbers slowly increasing in March before dropping off sharply in April. By May, seals have left the Bay (DeAngelis, 2020).

Seasonal nearshore marine mammal surveys were conducted at NAVSTA Newport between May 2016 and February 2017. The surveys were conducted along the western shoreline of Coasters Harbor Island northward to Coggeshall Point and eastward to include Gould Island. The only species that was sighted during the survey was harbor seal. During the spring survey of 2016, one live harbor seal was sighted on May 12 and one harbor seal carcass was observed and reported to the Mystic Aquarium Stranding Network (Moll, *et al.,* 2016, 2017; Navy, 2017b). A group of three harbor seals was sighted on February 1 2017, during the winter survey.

In Rhode Island waters, harbor seals prefer to haul out on isolated intertidal rock ledges and outcrops. Numerous Naval Station employees have reported seals hauled out on an intertidal rock ledge named ''The Sisters,'' which is north-northwest of Coddington Point and approximately 3,500 ft (1,066.8 m) from the proposed project area (see Figure 4–1 of the application) (NUWC Division, 2011). This haulout site has been studied by the NUWC Division Newport since 2011 and has demonstrated a steady increase in use during winter months when harbor seals are present in the Bay. Harbor seals are rarely observed at ''The Sisters'' haulout in the early fall (September–October) but sighted in consistent numbers in mid-November (0–10 animals), and are regularly observed with a gradual increase of more than 20 animals until numbers peak in the upper 40s during March, typically at low tide. The number of harbor seals begin to drop off in April and by mid-May, they are not observed hauled out at all (DeAngelis, 2020). Haulout spaces at ''The Sisters'' haulout site is primarily influenced by tide level, swell, and wind direction (Moll *et al.,* 2017; DeAngelis, 2020).

In addition to ''The Sisters'' haul out, there are 22 haulout sites in Narragansett Bay (see Figure 4–1 in the application). During a 1 day Narragansett Bay-wide count in 2018, there were at least 423 seals observed and all 22 haulout sites were represented. Preliminary results from the Bay-wide count for 2019 recorded 572 harbor seals, which also included counts from Block Island (DeAngelis, 2020).

Gray Seal

Gray seals within U.S. waters are from the western North Atlantic stock and are expected to be part of the eastern Canadian population. The western North Atlantic stock is centered in Canadian waters, including the Gulf of St. Lawrence and the Atlantic coasts of Nova Scotia, Newfoundland, and Labrador, Canada, and the northeast U.S. continental shelf (Hayes *et al.,* 2022). In U.S. waters, year-round breeding of approximately 400 animals has been documented on areas of outer Cape Cod and Muskeget Island in Massachusetts.

Gray seal occurrences in Rhode Island are mostly represented by stranding records—155 of 193 total records (80 percent). Gray seal records in the region are primarily from the spring (approximately 87 percent), with much smaller numbers in all other seasons. Kenney and Vigness-Raposa (2010) found strandings to be broadly distributed along ocean-facing beaches in Long Island and Rhode Island, with a few spring records in Connecticut. Habitat use by gray seals in Rhode Island is poorly understood. They are seen mainly when stranded or hauled out, and are infrequently observed at sea. There are very few observations of gray seals in Rhode Island other than strandings. The annual numbers of gray seal strandings in the Rhode Island study area since 1993 have fluctuated markedly, from a low of 1 in 1999 to a high of 24 in 2011 (Kenney, 2020). The very strong seasonality of gray seal occurrence in Rhode Island between March and June is linked to the timing of pupping in January and February. Most stranded individuals encountered in Rhode Island area appear to be post-weaning juveniles and starved or starving juveniles (Nawojchik, 2002; Kenney, 2005). Annual informal surveys conducted since 1994 observed a small number of gray seals in Narragansett Bay in 2016, although the majority of seals observed were harbor seals (ecoRI News, 2016).

Harp Seal

The harp seal is a highly migratory species, and its range can extend from the Canadian Arctic to New Jersey (Sergeant, 1965; Stenson and Sjare, 1997; Hayes *et al.,* 2021). Harp seals are classified into three stocks, which coincide with specific pupping sites on pack ice. These pupping sites are as follows: (1) Eastern Canada, including the areas off the coast of Newfoundland and Labrador and the area near the

Magdalen Islands in the Gulf of St. Lawrence; (2) the West Ice off eastern Greenland, and (3) the ice in the White Sea off the coast of Russia ((Lavigne and Kovacs, 1988; Bonner, 1990; Hayes *et al.,* 2021). In U.S. waters, the species has an increasing presence in the coastal waters between Maine and New Jersey with a general presence from January through May (Hayes *et al.,* 2021).

Harp seals in Rhode Island are known almost exclusively from strandings (approximately 98 percent). Strandings are widespread on ocean-facing beaches throughout Long Island and Rhode Island and the records occur almost entirely during spring (approximately 68 percent) and winter (approximately 30 percent). Harp seals are nearly absent in summer and fall. Harp seals also make occasional appearances well inland up rivers (Kenny and Vigness-Raposa, 2010). During late winter of 2020, a healthy harp seal was observed hauled out and resting near ''The Sisters'' haulout site (DeAngelis, 2020).

Hooded Seal

The hooded seal is a highly migratory species, and its range can extend from the Canadian Arctic to as far south as Puerto Rico (Mignucci-Giannoni and Odell, 2001; Hayes *et al.,* 2019). In U.S. waters, the species has an increasing presence in the coastal waters between Maine and Florida. Hooded seals in the U.S. are considered members of the western North Atlantic stock and generally occur in New England waters from January through May and further south off the southeast U.S. coast and in the Caribbean in the summer and fall seasons (McAlpine *et al.,* 1999; Harris *et al.,* 2001; and Mignucci-Giannoni and Odell, 2001; Hayes *et al.,* 2019).

Hooded seal occurrences in Rhode Island are predominately from stranding records (approximately 99 percent). They are rare in summer and fall but most common in the area during spring and winter (45 percent and 36 percent of all records, respectively) (Kenney, 2005; Kenny and Vigness-Raposa, 2010). Hooded seal strandings are broadly distributed across ocean-facing beaches in Rhode Island and they occasionally occur well up rivers, but less often than harp seals. Hooded seals have been recorded in Narragansett Bay but are considered occasional visitors and are expected to be the least encountered seal species in the Bay (RICRMC, 2010).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effect on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from vibratory and impact pile driving as well as rotary drilling and DTH mono-hammer events. The effects of underwater noise from OMAO's proposed activities have the potential to result in Level A and Level B harassment of marine mammals in the proposed action area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given

place and is usually a composite of sound from many sources both near and far (ANSI 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving, vibratory removal, and rotary drilling and DTH mono-hammer excavation events. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). DTH mono-hammer excavation includes the use of rotary drilling (non-impulsive sound source) and percussive hammering (impulsive sound source). The distinction between impulsive and non-impulsive sound sources is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Three types of hammers would be used on this project, impact, vibratory and DTH mono-hammer. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces sounds pressure levels (SPLs) 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

DTH systems, involving both mono-hammers and cluster-hammers, and rotary drills will also be used during the proposed construction. In rotary drilling, the drill bit rotates on the rock while the drill rig applies pressure. The bit rotates and grinds continuously to fracture the rock and create a hole. Rotary drilling is considered an intermittent, non-impulsive noise source. A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into to the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). Rock socketing involves using DTH equipment to create a hole in the bedrock inside which the pile is placed to give it lateral and longitudinal strength. The sounds produced by the DTH methods contain both a continuous, non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously.

The likely or possible impacts of OMAO's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site(s) close enough to be harassed due to the presence of equipment or personnel would be within the Level A or Level B harassment zones from pile driving/removal and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include heavy equipment operation during pile installation and removal (*i.e.,* impact and vibratory pile driving and removal, rotary drilling, and DTH mono-hammer excavation).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal equipment is the primary means by which marine mammals may be harassed from OMAO's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2003; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or

temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.,* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower $SEL_{cum,}$ the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *Auditory Masking,* below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), and California sea lions (*Zalophus californianus*). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times. The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b, 2020a, 2020b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015a; Mooney *et al.,* 2009). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources. Nachtigall *et al.* (2018) and Finneran (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018).

Activities for this project include impact and vibratory pile driving, vibratory pile removal, rotary drilling, and DTH mono-hammer excavation. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for threshold shift declines.

Behavioral harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010; Southall *et al.,* 2021). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be

significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists, along with contextual factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. There are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to respiration, interference with or alteration of vocalization, avoidance, and flight.

Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans.

Alteration of Dive Behavior—Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013). Seals exposed to non-impulsive sources with a received sound pressure level within the range of calculated exposures (142–193 dB re 1 μPa), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz *et al.,* 2010; Kvadsheim *et al.,* 2010). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Alteration of Feeding Behavior—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Silve *et al.,* 2016; Wensveen *et al.,* 2017). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal. Goldbogen *et al.* (2013) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure. Information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal will help better inform a determination of whether foraging disruptions incur fitness consequences.

Respiration—Respiration naturally varies with different behaviors, and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). Various studies also have shown that species and signal characteristics are important factors in whether respiration rates are unaffected or change, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2005, 2006, 2018; Gailey *et al.,* 2007; Isojunno *et al.,* 2018).

Vocalization—Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales (*Orcinus orca*) have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007; Rolland *et al.,* 2012). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (*e.g.,* whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004; NOAA, 2014). In some cases, however, animals may cease or alter sound production in response to underwater sound (*e.g.,* Bowles *et al.,* 1994; Castellote *et al.,* 2012; Cerchio *et al.,* 2014). Studies also demonstrate that even low levels of noise received far from the noise source can induce changes in vocalization and/or

behavioral responses (Blackwell *et al.,* 2013, 2015).

Avoidance—Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, *etc.*). Often avoidance is temporary, and animals return to the area once the noise has ceased. Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b; Kastelein *et al.,* 2015b; Kastelein *et al.,* 2015c; Kastelein *et al.,* 2018). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; Goold and Fish, 1998; Morton and Symonds, 2002; Hiley *et al.,* 2021) and to some extent in mysticetes (Malme *et al.,* 1984; McCauley *et al.,* 2000; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

Forney *et al.* (2017) described the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking. In cases of Western gray whales (*Eschrichtius robustus*) (Weller *et al.,* 2006) and beaked whales (*Ziphius cavirostris*), anthropogenic effects in areas where they are resident or exhibit site fidelity could cause severe biological consequences, in part because displacement may adversely affect foraging rates, reproduction, or health, while an overriding instinct to remain in the area could lead to more severe acute effects. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts.

Flight Response—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). There are limited data on flight response for marine mammals in water; however, there are examples of this response in species on land. For instance, the probability of flight responses in Dall's sheep *Ovis dalli dalli* (Frid, 2003), hauled out ringed seals (*Phoca hispida*) (Born *et al.,* 1999), Pacific brant (*Branta bernicla nigricans*), and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft more directly approached groups of these animals (Ward *et al.,* 1999). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been observed in marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates and efficiency (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998).

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Many of the contextual factors resulting from the behavioral response studies (*e.g.,* close approaches by multiple vessels or tagging) would not occur during the proposed action. In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR, 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. The proposed action involves impact and vibratory pile driving, vibratory pile removal, rotary drilling, and DTH mono-hammer excavation. Given the similarities in activities and habitat (*e.g.,* cool-temperate waters, industrialized area), we expect similar behavioral responses from the same and similar species affected by OMAO's proposed action. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements).

To assess the strength of behavioral changes and responses to external sounds and SPLs associated with changes in behavior, Southall *et al.,* (2007) developed and utilized a severity scale, which is a 10 point scale ranging from no effect (labeled 0), effects not likely to influence vital rates (low; labeled from 1 to 3), effects that could affect vital rates (moderate; labeled 4 to

6), to effects that were thought likely to influence vital rates (high; labeled 7 to 9). Southall *et al.,* (2021) updated the severity scale by integrating behavioral context (*i.e.,* survival, reproduction, and foraging) into severity assessment. For non-impulsive sounds (*i.e.,* similar to the sources used during the proposed action), data suggest that exposures of pinnipeds to sources between 90 and 140 dB re 1 μPa do not elicit strong behavioral responses; no data were available for exposures at higher received levels for Southall *et al.,* (2007) to include in the severity scale analysis. Reactions of harbor seals were the only available data for which the responses could be ranked on the severity scale. For reactions that were recorded, the majority (17 of 18 individuals/groups) were ranked on the severity scale as a 4 (defined as moderate change in movement, brief shift in group distribution, or moderate change in vocal behavior) or lower; the remaining response was ranked as a 6 (defined as minor or moderate avoidance of the sound source).

Habituation—Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud impulsive sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects.

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Narragansett Bay supports cargo vessel traffic as well as numerous recreational and fishing vessels, and background sound levels in the proposed project area are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be

exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further.

Marine Mammal Habitat Effects

OMAO's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6 m) radius around the pile (Everitt *et al.,* 1980). Turbidity and sedimentation effects are expected to be short-term, minor, and localized. Re-suspended sediments in Coddington Cove are expected to remain in Coddington Cove due to the circular nature of the currents with ambient conditions returning a few hours after completion of construction. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in Narragansett Bay. In addition, the area is highly influenced by anthropogenic activities and habitat in this area has been previously disturbed by as a part of offshore remediation activities. The total seafloor area affected by pile installation and removal is a small area compared to the vast amount of habitat available to marine mammals in the area. All marine mammal species using habitat near the proposed project area are primarily transiting the area. There are no known foraging or haulout areas within one half mile of the proposed project area. Furthermore, pile driving and removal at the project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by

barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fishes from pile driving and removal and construction activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated.

Construction activities have the potential to have adverse impacts on forage fish in the project area in the form of increased turbidity. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish in the proposed project area. However, fish in the proposed project area would be able to move away from and avoid the areas where increase turbidity may occur. Given the limited area affected and ability of fish to move to other areas, any effects on forage fish are expected to be minor or negligible.

In summary, given the short daily duration of sound associated with individual pile driving and removal events and the relatively small areas being affected, pile driving and removal activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* pile driving and removal, DTH, and rotary drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species and phocids because predicted auditory injury zones are larger than for mid-frequency species. Auditory injury is unlikely to occur for mid-frequency species. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

OMAO's proposed activities includes the use of continuous (vibratory hammer/rotary drill/DTH mono-hammer) and impulsive (impact hammer/DTH mono-hammer) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). OMAO's proposed activity includes the use of impulsive (impact hammer/DTH mono-hammer) and non-impulsive (vibratory hammer/rotary drill/DTH mono-hammer) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-}pk.flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-}pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric 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 are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). 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 weighted 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 thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, vibratory pile removal, rotary drilling, and DTH).

The intensity of underwater sound is greatly influenced by factors such as the size and type of piles, type of driver or drill, and the physical environment in which the activity takes place. In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used representative source levels (Table 6) from acoustic monitoring at other locations.

TABLE 6—SOURCE LEVELS FOR PROPOSED ACTIVITIES

Method	Pile type	Pile diameter	Peak (dB re 1 μPa)	RMS (dB re 1 μPa)	SEL (dB re 1 μPa 2-sec sec)	Reference
Vibratory Extraction	Steel pipe [1]	12″	171	155	155	Caltrans 2020, Table 1.2–1d.
	Timber	12″	NA	152	NA	NMFS 2021a, Table 4.
Vibratory Installation	Steel pipe	18″	NA	162 [2]	162	NAVFAC Mid-Atlantic 2019, Table 6–4.
	Sheet pile	Z26–700 [3]	NA	156	NA	NMFS 2019, p.37846.
	Steel pipe	30″	NA	167	167	Navy 2015, p.14.
	Casing/shaft for steel pipe.	36″	NA	175	175	NAVFAC Mid-Atlantic 2019, Table 6–4.
DTH Mono-hammer	Steel pipe	18″	172	167	146	Egger, 2021; Guan and Miner 2020; Heyvaert and Reyff, 2021.
	Casing/shaft for steel pipe.	36″ [4]	194	167	164	Reyff and Heyvaert 2019; Reyff 2020; and Denes et al. 2019.
Rotary Drilling	Steel pipe	18″ and 30″	NA	154	NA	Dazey et al. 2012.
Impact Install	Steel pipe [5]	18″	208	187	176	Caltrans 2020, Table 1.2–1a.
	Steel pipe	30″	211	196	181	NAVFAC Southwest 2020, p.A–4.
Vibratory Installation/Extraction	Steel pipe	16″	NA	162	162	NAVFAC Mid-Atlantic 2019, Table 6–4.

[1] 13-inch steel pipe used as proxy because data were not available for vibratory install/extract of 12-inch steel pipe.
[2] Although conservative, this 162 dB RMS is consistent with source level value used for 18-inch steel pipe in for Dry Dock 1 at Portsmouth Naval Shipyard (84 FR 13252, April 4, 2019).
[3] 30-inch steel pipe pile used as the proxy source for vibratory driving of steel sheet piles because data were not available for Z26–700 (Navy 2015 [p. 14]).
[4] Guidance from NMFS states: For each metric, select the highest SL provided among these listed references (Reyff and Heyvaert, 2019); (Reyff J., 2020); (Denes *et al.,* 2019).
[5] Impact install of 20-inch steel pipe used as proxy because data were not available for 18-inch.

Notes: All SPLs are unattenuated; dB = decibels; NA = Not applicable/Not available; RMS = root mean square; SEL = sound exposure level; Caltrans = California Department of Transportation; NAVFAC = Naval Facilities Engineering Systems Command; dB re 1 μPa = dB referenced to a pressure of 1 microPascal, measures underwater SPL. dB re 1 μPa2-sec = dB referenced to a pressure of 1 microPascal squared per second, measures underwater SEL.
Single strike SEL are the proxy source levels presented for impact pile driving and were used to calculate distances to PTS. All data referenced at 10 meters.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021) (Table 1 includes number of piles and duration; Table 6 includes sound pressure levels for each pile type). At the time of the Navy's application submission, NMFS recommended that the RMS sound pressure level at 10 m should be 167 dB when evaluating Level B harassment (Heyvaert and Reyff, 2021 as cited in NMFS 2021b) for all DTH pile/hole sizes. However, since that time, NMFS has received additional clarifying information regarding DTH data presented in Reyff and Heyvaert (2019) and Reyff (2020) that allows for different RMS sound pressure levels at 10 m to be recommended for piles/holes of varying diameters. Therefore, NMFS proposes to use the following proxy RMS sound pressure levels at 10 m to evaluate Level B harassment from this sound source in this analysis (Table 6): 167 dB RMS for the 18-inch steel pipe piles (Heyvaert and Reyff, 2021) and 174 dB RMS for the 36 inch steel shafts (Reyff and Heyvaert, 2019; Reyff, 2020).

Level B Harassment Zones

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:

TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 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.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, known as practical spreading. As is common practice in coastal waters, here we assume practical spreading (4.5 dB reduction in sound level for each doubling of distance). Practical spreading was used to determine sound propagation for this project.

The TL model described above was used to calculate the expected noise propagation from vibratory pile driving/extracting, impact pile driving, rotary drilling, and DTH mono-hammer excavation using representative source levels to estimate the harassment zones or area exceeding the noise criteria. Utilizing the described practical spreading model, NMFS calculated the Level B isopleths shown in Tables 7 and 8. The largest calculated Level B isopleth, with the exception of concurrent activities, discussed below, is 46,416 m for the vibratory installation of the 36″ steel casing/shaft guide piles with rock socket to build the small boat floating dock; however, this distance is truncated by shoreline in all directions, so sound would not reach the full distance of the calculated Level B harassment isopleth. This activity would generate a maximum ensonified area of 3.31 km² (Table 8).

Level A Harassment Zones

The ensonified area associated with Level A harassment is technically more challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool are reported in Tables 1 (number piles/day and duration to drive a single pile) and 6 (source levels/distance to source levels). The resulting estimated isopleths are reported below in Tables 7 and 8. The largest Level A isopleth would be generated by the impact driving of the 30″ steel pipe pile at the proposed pier for high-frequency cetaceans (3,500.3 m; Table 7). This activity would have a maximum ensonified area of 6.49 km² (Table 7). Excluding concurrent activities, described below, the largest calculated Level B isopleth would be generated by the vibratory installation of the 36″ steel casing/shaft guide piles at the proposed small boat floating dock (46,416 m; Table 8), though as noted above, this distance would be truncated by shoreline in all directions, so sound would not reach the full distance of the calculated Level B harassment isopleth. This activity would have a maximum ensonified area of 3.31 km² (Table 8).

TABLE 7—MAXIMUM DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS FOR IMPULSIVE SOUND

[Impact Hammer and DTH Mono-Hammer]

Structure	Pile size and type	Activity	Level A (PTS onset) harassment			Level B (behavioral) harassment
			Maximum distance to 185 dB SEL_{cum} threshold(m)/ area of harassment zone (km^2)	Maximum distance to 155 dB SEL_{cum} threshold(m)/ area of harassment zone (km^2)	Maximum distance to 185 dB SEL_{cum} threshold(m)/ area of harassment zone (km^2)	Maximum distance 160 dB RMS SPL (120 dB DTH) threshold (m)/ area of harassment zone (km^2)
			MF cetacean	HF cetacean	Phocid	All Marine Mammals
Bulkhead construction (Combination Pipe/Z-pile).	18″ steel pipe	Impact Install	48.5/0.0037	1,624.7/0.66	729.9/0.21	631/0.16
		DTH Mono-Hammer	4.6/0.000033	154.2/0.028	69.3/0.0075	13,594/3.31
Trestle (Bents 1–18)	18″ steel pipe	Impact Install	25.2/0.0020	844.9/1.21	379.6/0.38	631/0.82
Trestle (Bent 19)	30″ steel pipe	Impact Install	65.8/0.014	2,205.0/3.72	990.7/1.47	2,512/4.44
Pier	30″ steel pipe	Impact Install	104.5/0.034	3,500.3/6.49	1,572.6/2.50	2,512/4.44
Gangway support piles (small boat floating dock).	18″ steel pipe	Impact Install	19.3/0.00058	644.8/0.17	289.7/0.049	631/0.16
Small Boat Floating Dock	36″ Steel Casing/Shaft with Rock Socket (Guide Pile).	Impact Install	35.5/0.002	1,189.5/0.45	534.4/0.12	3,415/2.14
		DTH Mono-Hammer	73/0.0084	2,444.5/1.21	1,098.2/0.42	13,594/3.31

Notes: dB = decibel; DTH = down-the-hole; dB RMS SPL = decibel root mean square sound pressure. level; dB SEL_{cum} = cumulative sound exposure level; m = meter; PTS = Permanent Threshold Shift; km^2 = square kilometer.

TABLE 8—MAXIMUM DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS FOR CONTINUOUS

[Vibratory Hammer/Rotary Drill]

Structure	Pile size and type	Activity	Level A (PTS onset) harassment			Level B (behavioral) harassment
			Maximum distance to 198 dB SEL_{cum} threshold(m)/ area of harassment zone (km^2)	Maximum distance to 173 dB SEL_{cum} threshold(m)/ area of harassment zone (km^2)	Maximum distance to 201 dB SEL_{cum} threshold(m)/ area of harassment zone (km^2)	Maximum distance 120 dB RMS SPL (120 dB DTH) threshold (m)/ area of harassment zone (km^2)
			MF cetacean	HF cetacean	Phocid	All Marine Mammals
Abandoned guide piles along bulkhead.	12″ steel pipe	Vibratory Extract	0.3/0	5.3/0.000044	2.2/0.000008	2,514/1.26
Floating dock demolition (Timber Guide Piles).	12″ timber	Vibratory Extract	0.2/0	4/0.000025	1.7/0.000005	1,359/0.53
Bulkhead construction (Combination Pipe/Z-pile).	18″ steel pipe	Vibratory Install	1.8/0.000005	29.7/0.0014	12.2/0.00023	6,310/3.31
	Steel sheet Z26–700	Vibratory Install	0.7/0.000001	11.8/0.00022	4.9/0.000038	2,512/1.26
	16″ steel pipe template piles	Vibratory Install/Extract	1.1/0.000002	18.7/0.00055	7.7/0.000093	6,310/3.31
Trestle (Bents 1–18)	18″ steel pipe	Vibratory Install	0.7/0.000002	11.8/0.00044	4.8/0.000072	6,310/8.53
	18″ steel pipe hole	Rotary Drill	0.0/0	0.6/0.000001	0.4/0.000001	1,848/2.98
	16″ steel pipe template piles	Vibratory Install/Extract	1.1/0.000004	18.7/0.0011	7.7/0.00019	6,310/8.53
Trestle (Bent 19)	30″ steel pipe	Vibratory Install	2.0/0.000013	33.2/0.0034	13.7/0.00059	13,594/8.53
	16″ steel pipe template piles	Vibratory Install/Extract	1.1/0.000004	18.7/0.0011	7.7/0.00019	6,310/8.53
Pier	30″ steel pipe	Vibratory Install	3.2/0.000032	52.8/0.0087	21.7/0.0015	13,594/8.53
	30″ hole	Rotary Drill	0.0/0	0.6/0.000001	0.4/0.000001	1,848/2.98
	16″ steel pipe template piles	Vibratory Install/Extract	1.1/0.000004	18.7/0.0011	7.7/0.00019	6,310/8.53
Fender Piles	16″ steel pipe	Vibratory Install	0.9/0.000003	14.3/0.00064	5.9/0.00011	6,310/8.53
	16″ steel pipe template piles	Vibratory Install/Extract	1.1/0.000004	18.7/0.0011	7.7/0.00019	6,310/8.53
Gangway support piles (small boat floating dock).	18″ steel pipe	Vibratory Install	0.7/0.000001	11.8/0.00022	4.8/0.000036	6,310/3.31
Small Boat Floating Dock	36″ Steel Casing/Shaft Guide Piles with Rock Socket.	Vibratory Install	5.2/0.000042	86.6/0.012	35.6/0.002	46,416/3.31
	16″ steel pipe template piles	Vibratory Install/Extract	1.1/0.000002	18.7/0.00055	7.7/0.000093	6,310/3.31

Notes: dB = decibel; dB RMS SPL = decibel root mean square sound pressure level; dB SELcum = cumulative sound exposure level; m = meter; PTS = Permanent Threshold Shift; km^2 = square kilometer.

Concurrent Activities

Simultaneous use of two or three impact, vibratory, or DTH hammers, or rotary drills, could occur (potential combinations described in Table 1) and may result in increased sound source levels and harassment zone sizes, given the proximity of the structure sites and the rules of decibel addition (Table 9).

NMFS (2018b) handles overlapping sound fields created by the use of more

than one hammer differently for impulsive (impact hammer and Level A harassment zones for drilling with a DTH hammer) and continuous sound sources (vibratory hammer, rotary drill, and Level B harassment zones for drilling with a DTH hammer (Table 9) and differently for impulsive sources with rapid impulse rates of multiple strikes per second (DTH) and slow impulse rates (impact hammering) (NMFS 2021). It is unlikely that the two impact hammers will strike at the same instant, and therefore, the SPLs will not be adjusted regardless of the distance between impact hammers. In this case, each impact hammer will be considered to have its own independent Level A harassment and Level B harassment zones.

When two DTH hammers operate simultaneously their continuous sound components overlap completely in time. When the Level B isopleth of one DTH sound source encompasses the isopleth of another DTH sound source, the sources are considered additive and combined using the rules for combining sound source levels generated during pile installation, described in Table 9.

TABLE 9—RULES FOR COMBINING SOUND SOURCE LEVELS GENERATED DURING PILE INSTALLATION

Hammer types	Difference in SSL	Level A zones	Level B zones
Vibratory, Impact	Any	Use impact zones	Use largest zone.
Impact, Impact	Any	Use zones for each pile size and number of strikes.	Use zone for each pile size.
Vibratory, Vibratory Rotary drill, or DTH, DTH	0 or 1 dB	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
	2 or 3 dB	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
	4 to 9 dB	Add 1 dB to the higher source level	Add 1 dB to the higher source level.
	10 dB or more	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

Note: The method is based on a method created by Washington State Department of Transportation (WSDOT 2020) and has been updated and modified by NMFS.

When two continuous noise sources have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources. When two or more continuous noise sources are used simultaneously, and the isopleth of one sound source encompasses the isopleth of another sound source, the sources are considered additive and source levels are combined using the rules of decibel addition (Table 9; NMFS 2021c).

For simultaneous use of three or more continuous sound sources, NMFS first identifies the three overlapping sources with the highest sound source level. Then, using the rules for combining sound source levels generated during pile installation (Table 9), NMFS determines the difference between the lower two source levels, and adds the appropriate number of decibels to the higher source level of the two. Then, NMFS calculates the difference between the newly calculated source level and the highest source level of the three identified in the first step, and again, adds the appropriate number of decibels to the highest source level of the three.

For example, with overlapping isopleths from 24″, 36″, and 42″ diameter steel pipe piles with sound source levels of 161, 167, and 168 dB RMS respectively, NMFS would first calculate the difference between the 24″ and 36″ source levels (167 dB − 161 dB = 6 dB. Then, given that the difference is 6 dB, as described in Table 9, NMFS would then add 1 dB to the highest of the two sound source levels (167 dB), for a combined noise level of 168 dB. Next, NMFS calculates the difference between the newly calculated 168 dB and the sound source level of the 42″ steel pile (168 dB). Since 168 dB − 168 dB = 0 dB, 3 dB is added to the highest value (168 dB + 3 dB = 171 dB). Therefore, for the combination of 24″, 36″, and 42″ steel pipe piles, zones would be calculated using a combined sound source level of 171 dB.

If an impact hammer and a vibratory hammer are used concurrently, the largest Level B harassment zone generated by either hammer would apply, and the Level A harassment zone generated by the impact hammer would apply. Simultaneous use of two or more impact hammers does not require source level additions as it is unlikely that two hammers would strike at the same exact instant. Thus, sound source levels are not adjusted regardless of distance, and the zones for each individual activity apply.

For activity combinations that do require sound source level adjustment, Table 10 shows the revised proxy source levels for concurrent activities based upon the rules for combining sound source levels generated during pile installation, described in Table 9. Resulting Level A harassment and Level B harassment zones for concurrent activities are summarized in Table 11. The maximum Level A harassment isopleth would be 2,444.5 m for high-frequency cetaceans generated by concurrent use of two vibratory pile drivers and DTH mono-hammer during installation of 36″ shafts for the small boat floating dock (Table 11). The maximum Level B harassment isopleth would be 54,117 m for the concurrent use of DTH mono-hammer and two vibratory pile drivers for installation of 36″ shafts for the small boat floating dock (Table 11).

TABLE 10—PROXY VALUES FOR SIMULTANEOUS USE OF NON-IMPULSIVE SOURCES

Structure	Activity and proxy	New proxy
Bulkhead	Vibratory Install 16-inch steel pipe piles—162 dB RMS	165 dB RMS
	Vibratory Install 18-inch steel pipe piles—162 dB RMS.	
	Vibratory Install 18-inch steel pipe piles—162 dB	168 dB RMS
	DTH Install 18-inch steel pipe piles—167 dB.	

TABLE 10—PROXY VALUES FOR SIMULTANEOUS USE OF NON-IMPULSIVE SOURCES—Continued

Structure	Activity and proxy	New proxy
Bulkhead and Trestle	Vibratory Install/extract 16-inch steel pipe piles—162 dB RMS	166 dB RMS
	Vibratory Install Z26–700 sheet piles—156 dB RMS.	
	Vibratory Install 18-inch steel pipe piles—162 dB RMS.	
	Vibratory Install/extract 16-inch steel pipe piles—162 dB RMS	163 dB RMS
	Vibratory Install Z26–700 sheet piles—156 dB RMS.	
	Rotary Drill 18-inch steel pipe piles—154 dB RMS.	
Pier	Vibratory Install/extract 16-inch steel pipe piles—162 dB RMS	168 dB RMS
	Vibratory Install 30-inch steel pipe piles—167 dB RMS.	
	Vibratory Install/extract 16-inch steel pipe piles—162 dB RMS	163 dB RMS
	Rotary Drill 30-inch steel pipe piles—154 dB RMS.	
Pier Fender Piles and Small Boat Floating Dock.	Vibratory Install/extract 16-inch steel pipe piles—162 dB RMS	165 dB RMS
	Vibratory Install 18-inch steel pipe piles—162 dB RMS.	
	Vibratory Install/extract 16-inch steel pipe piles—162 dB RMS	175 dB RMs
	Vibratory Install 36-inch steel pipe piles—175 dB RMS.	
	Vibratory Install 36-inch steel casing—175 dB	176 dB
	DTH Install 36-inch steel casing—167 dB.	

TABLE 11—MAXIMUM DISTANCES TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR CONCURRENT ACTIVITIES

Structure	Pile sizes and type	Activity	Total production days	Level A (PTS onset) harassment			Level B (behavioral) harassment
				Maximum distance to continuous 198 dB SEL_{cum}; DTH 185 dB SEL_{cum} thresholds (m)/area of harassment zone (km^2) MF cetacean	Maximum distance to continuous 173 dB SEL_{cum}; DTH 155 dB SEL_{cum} thresholds (m)/Area of harassment zone (km^2) HF cetacean	Maximum distance to continuous 201 dB SEL_{cum}; DTH 185 dB SEL_{cum} thresholds (m)/area of harassment zone (km^2) Phocid	Maximum distance 120 dB RMS SPL threshold (m)/area of harassment zone (km^2) (continuous and DTH)
Bulkhead	Install of 16-inch and 18-inch steel pipe piles.	Install/Extract using two Vibratory Pile Drivers.	15	3.7/0.000021	61.6/0.0060.	25.3/0.001.	10,000/3.31
	Install of 18-inch steel pile	Install using two Vibratory Pile Drivers and DTH monohammer.	12	Vibratory: 1.8/0.000005 DTH: 4.6/0.000033.	Vibratory: 29.7/0.0014 DTH: 154.2/0.028.	Vibratory: 12.2/0.00023 DTH: 69.3/0.0075.	15,848.93/3.31
Bulkhead and Trestle.	Install of 16-inch and 18-inch steel pipe and Z26–700 steel sheet piles.	Install/Extract using three Vibratory Pile Drivers.	15	4.1/0.000026	68.3/0.0073.	28.1/0.0012.	10,000/3.31
		Install/Extract using two Vibratory Pile Drivers and a Rotary Drill.	14	2.9/0.000013	47.8/0.0036.	19.7/0.00061.	7,356/3.31
Pier	Install of 16- and 30-inch steel pipe.	Install/Extract using two Vibratory Pile Drivers.	30	5.9/0.00011	97.6/0.030.	40.1/0.0050.	15,849/8.53
		Install/Extract using a vibratory pile driver and rotary drill.	27	2.0/0.0031	33.1/0.0034.	13.6/0.00058.	7,356/8.53
Pier Fender Piles and Gangway Support for Small Boat Floating Dock.	Install of 16- and 18-inch steel pipe.	Install/Extract using two Vibratory Pile Drivers.	17	2.3/0.000017	38.8/0.0047.	16.0/0.0008.	10,000/8.53
	Install of 16-inch steel pipe and 36-inch shafts.	Install using two Vibratory Pile Drivers.	20	9.6/0.00029	159.5/0.080.	65.6/0.013.	46,416/8.53

TABLE 11—MAXIMUM DISTANCES TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR CONCURRENT ACTIVITIES—Continued

Structure	Pile sizes and type	Activity	Total production days	Level A (PTS onset) harassment			Level B (behavioral) harassment
				Maximum distance to continuous 198 dB SEL_{cum}; DTH 185 dB SEL_{cum} thresholds (m)/area of harassment zone (km^2) MF cetacean	Maximum distance to continuous 173 dB SEL_{cum}; DTH 155 dB SEL_{cum} thresholds (m)/Area of harassment zone (km^2) HF cetacean	Maximum distance to continuous 201 dB SEL_{cum}; DTH 185 dB SEL_{cum} thresholds (m)/area of harassment zone (km^2) Phocid	Maximum distance 120 dB RMS SPL threshold (m)/area of harassment zone (km^2) (continuous and DTH)
	Install of 36-inch shafts	Install using two Vibratory Pile Drivers and DTH mono-hammer.	2	Vibratory: 5.2/0.000042 DTH: 73/0.0084.	Vibratory: 86.6/0.012 DTH: 2,444.5/1.21.	Vibratory: 35.6/0.002 DTH: 1,098.2/0.42.	DTH: 54,117/8.53

dB RMS SPL = decibel root mean square sound pressure level; dB SEL_{cum} = cumulative sound exposure level; m = meter; PTS = Permanent Threshold Shift; km^2 = square kilometer.

The Level B harassment zones in Table 11 were calculated based upon the adjusted source levels for simultaneous construction activities (Table 10). OMAO has not proposed any scenarios for concurrent work in which the Level A harassment isopleths would need to be adjusted from that calculated for single sources. Regarding implications for Level A harassment zones when multiple vibratory hammers, or vibratory hammers and rotary drills, are operating concurrently, given the small size of the estimated Level A harassment isopleths for all hearing groups during vibratory pile driving, the zones of any two hammers or hammer and drill are not expected to overlap. Therefore, compounding effects of multiple vibratory hammers operating concurrently are not anticipated, and NMFS has treated each source independently.

Regarding implications for Level A harassment zones when vibratory hammers are operating concurrently with a DTH hammer, combining isopleths for these sources is difficult for a variety of reasons. First, vibratory pile driving relies upon non-impulsive PTS thresholds, while DTH hammers use impulsive thresholds. Second, vibratory pile driving accounts for the duration to drive a pile, while DTH account for strikes per pile. Thus, it is difficult to measure sound on the same scale and combine isopleths from these impulsive and non-impulsive, continuous sources. Therefore, NMFS has treated each source independently at this time.

Regarding implications for impact hammers used in combination with a vibratory hammer or DTH hammer, the likelihood of these multiple sources' isopleths completely overlapping in time is slim primarily because impact pile driving is intermittent. Furthermore, non-impulsive, continuous sources rely upon non-impulsive TTS/PTS thresholds, while impact pile driving uses impulsive thresholds, making it difficult to calculate isopleths that may overlap from impact driving and the simultaneous action of a non-impulsive continuous source or one with multiple strikes per second. Thus, with such slim potential for multiple different sources' isopleths to overlap in space and time, specifications should be entered as ''normal'' into the User Spreadsheet for each individual source separately.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. Potential exposures to construction noise for each acoustic threshold were estimated using marine mammal density estimates (N) from the Navy Marine Species Density Database (NMSDD) (Navy, 2017a). OMAO evaluated data reflecting monthly densities of each species to determine minimum, maximum, and average annual densities within Narragansett Bay. Table 12 summarizes the average annual densities of species that may be impacted by the proposed construction activities, with the exception of harbor seals as the density value for this species in the table represents the maximum density value for seals.

TABLE 12—AVERAGE DENSITIES BY SPECIES USED IN EXPOSURE ANALYSIS

Species	Average density in project area (species per km^2)
Atlantic White-sided Dolphin	0.003
Common Dolphin	0.011
Harbor Porpoise	0.012
Harbor Seal	0.623
Gray Seal	0.131
Harp Seal	0.05
Hooded Seal	0.001

The NMSDD models reflect densities for seals as a guild due to difficulty in distinguishing these species at sea. Harbor seal is expected to be the most common pinniped in Narragansett Bay with year-round occurrence (Kenney and Vigness-Raposa, 2010). Therefore, OMAO used the maximum density for the seal guild for harbor seal. Gray seals are the second most common seal to be observed in Rhode Island waters and, based on stranding records, are commonly observed during the spring to early summer and occasionally observed during other months of the year (Kenney, 2020). Therefore, the average density for the seal guild was used for gray seal occurrence in Narragansett Bay. Minimum densities for the seal guild were used for harp seal and hooded seals as they are considered occasional visitors in Narragansett Bay

but are rare in comparison to harbor and gray seals (Kenney, 2015). NMFS has carefully reviewed and concurs with the use of these densities proposed by OMAO.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

For each species, OMAO multiplied the average annual density by the largest ensonified area (Tables 7, 8, 11) and the maximum days of activity (Tables 7, 8, 11) (take estimate = N × ensonified area × days of pile driving) in order to calculate estimated take by Level A harassment and Level B harassment. OMAO used the pile type, size, and construction method that produce the largest isopleth to estimate exposure of marine mammals to noise impacts. The exposure estimate was rounded to the nearest whole number at the end of the calculation. Table 13 shows the total estimated number of takes for each species by Level A harassment and Level B harassment for individual and concurrent activities as well as estimated take as a percent of stock abundance. Estimated take by activity type for individual and concurrent equipment use for each species is shown in Tables 6–12 through 6–17 in the application. OMAO is requesting take by Level A harassment of 4 species (harbor porpoise, harbor seal, gray seal, and harp seal) incidental to construction activities using one equipment type. In addition, OMAO is requesting one take of harbor seals by Level A harassment during concurrent use of a DTH mono-hammer and two vibratory hammers for installation of 36″ shafts for the small boat floating dock.

To account for group size, OMAO conservatively increased the estimated take by Level B harassment from 9 to 16 Atlantic white-sided dolphins, as the calculated take was less than the documented average group size (NUWC, 2017). NMFS agrees with this approach, and is proposing to authorize 16 takes by Level B harassment of Atlantic white-sided dolphins. The species density for the hooded seal was too low to result in any calculated estimated takes. In order to be conservative, OMAO requested, and NMFS is proposing to authorize, 1 take by Level B harassment of hooded seals for each month of construction activity when this species may occur in the project area. Hooded seals may occur in the project area from January through May which is a total of 5 months. Therefore, OMAO is requesting, and NMFS is proposing to authorize, 5 takes by Level B harassment of hooded seals for individual construction activities and 5 takes by Level B harassment of hooded seals for concurrent construction activities for a total of 10 takes by Level B harassment of hooded seals.

TABLE 13—TOTAL ESTIMATED TAKE BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR INDIVIDUAL AND CONCURRENT ACTIVITIES

Species	Individual activities		Concurrent activities		Total requested take	% of stock
	Level A harassment	Level B harassment	Level A harassment	Level B harassment		
Atlantic white-sided dolphin	0	6	0	3	16 [1]	0.2
Short-beaked common dolphin	0	26	0	13	39	0.2
Harbor Porpoise	2	27	0	13	42	0.044
Harbor Seal	55	1,478	1	589	2,123	3.46
Gray Seal	11	312	0	125	448	1.64
Harp Seal	4	117	0	47	168	0.002
Hooded Seal	0	[2] 5	0	[2] 5	10	0.002

[1] Requested take has been increased to mean group size (NUWC, 2017). Mean group size was not used for those take estimates that exceeded the mean group size.

[2] OMAO is conservatively requesting 1 take by Level B harassment of hooded seal per month of construction when this species may occur in the project area (January through May).

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

NMFS proposes the following mitigation measures be implemented for OMAO's pile installation and removal activities.

Shutdown Zones

OMAO will establish shutdown zones for all pile driving activities. 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). Shutdown zones would be based upon the Level A harassment zone for each pile size/type and driving method, as shown in Table 14. If the

Level A harassment zone is too large to monitor, the shutdown zone would be limited to a radial distance of 200 m from the acoustic source (86 FR 71162, December 15, 2021; 87 FR 19886, April 6, 2022). For example, the largest Level A harassment zone for high-frequency cetaceans extends approximately 2,444,5 m from the source during DTH mono-hammer excavation while installing the 36-in steel shafts for the small boat floating dock (Table 7). OMAO plans to maintain maximum shutdown zone of 200 m for that activity, consistent with prior projects in the area (87 FR 11860, March 2, 2022).

A minimum shutdown zone of 10 m would be applied for all in-water construction activities if the Level A harassment zone is less than 10 m (*i.e.,* vibratory pile driving, drilling). The 10 m shutdown zone would also serve to protect marine mammals from collisions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity 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 indicated in Table 14 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

If a marine mammal enters the Level B harassment zone, in-water work would proceed and PSOs would document the marine mammal's presence and behavior.

TABLE 14—SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES BY ACTIVITY

Pile type/size	Driving method	Shutdown zone (m)		Level B harassment zone (m)
		Cetaceans	Pinnipeds	All marine mammals
12″ steel pipe	Vibratory extraction	10	10	2,600.
12″ timber	Vibratory extraction	15	10	3,500.
16″ steel pipe	Vibratory install/extract	20	10	6,400.
18″ steel pipe	Impact install	[1] 200	[1] 200	640.
	Vibratory install	30	15	6,400.
	DTH Mono-hammer	[1] 200	[1] 200	Maximum harassment zone.[2]
	Rotary drilling 18″ holes	10	10	1,900.
Z26–700 steel sheets	Vibratory install	15	10	2,600.
30″ steel pipe	Impact install	[1] 200	[1] 200	2,600.
	Vibratory install	55	25	Maximum harassment zone.[2]
30″ steel pipe	Rotary drilling	10	10	1,900.
36″ steel pipe	Impact install	[1] 200	[1] 200	3,400.
	Vibratory install	90	40	Maximum harassment zone [2]
36″ shafts	DTH Mono-hammer	[1] 200	[1] 200	Maximum harassment zone.[2]

[1] Distance to shutdown zone distances implemented for other similar projects in the region (NAVFAC, 2019).
[2] Harassment zone would be truncated due to the presence of intersecting land masses and would encompass a maximum area of 3.31 km^2.

Protected Species Observers

The placement of protected species observers (PSOs) during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level A Harassment and Level B Harassment

PSOs would monitor the full shutdown zones and the remaining Level A harassment and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown, Level A harassment, and Level B harassment for a period of 30 minutes. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed within the shutdown zones listed in Table 14, construction activity would be delayed until the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 14 or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities would begin and Level B harassment take would be recorded. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters are visible). If the shutdown zone is obscured by fog or poor lighting conditions, in-water construction activity would not be initiated until the entire shutdown zone is visible.

Soft-Start

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required 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. Soft start would 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.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the

proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the 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); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during in-water construction activities would be conducted by PSOs meeting NMFS' standards and in a manner consistent with the following:

- Independent PSOs (*i.e.,* employees of the entity conducting construction activities may not serve as PSOs) who have no other assigned tasks during monitoring periods would be used;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

PSOs would have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including 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; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Visual monitoring would be conducted by a minimum of two trained PSOs positioned at suitable vantage points. Any activity for which the Level B harassment isopleth would exceed 1,900 meters would require a minimum of three PSOs to effectively monitor the entire Level B harassment zone. PSOs would likely be located on Gould Island South, Gould Island Pier, Coddington Point, Bishop Rock, Breakwater, or Taylor Point as shown in Figure 11–1 in the application. All PSOs would have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cells phones for maintaining contact with work crews.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

OMAO and the Navy shall conduct briefings between construction supervisors and crews, PSOs, OMAO and Navy staff prior to the start of all pile driving activities and when new personnel join the work. These briefings would explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Hydro-Acoustic Monitoring

OMAO would implement in situ acoustic monitoring efforts to measure SPLs from in-water construction activities by collecting and evaluating acoustic sound recording levels during activities. Stationary hydrophones would be placed 33 ft (10 m) from the noise source, in accordance with NMFS' most recent guidance for the collection of source levels. If there is the potential for Level A harassment, a second monitoring location would be set up at an intermediate distance between cetacean/phocid shutdown zones and Level A harassment zones. Hydrophones would be deployed with a static line from a stationary vessel. Locations of hydro-acoustic recordings would be collected via GPS. A depth sounder and/or weighted tape measure would be used to determine the depth of the water. The hydrophone would be attached to a weighted nylon cord or chain to maintain a constant depth and distance from the pile area. The nylon cord or chain would be attached to a float or tied to a static line.

Each hydrophone would be calibrated at the start of each action and would be checked frequently to the applicable standards of the hydrophone manufacturer. Environmental data would be collected, including but not limited to, the following: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could

contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats, *etc.*). The chief inspector would supply the acoustics specialist with the substrate composition, hammer or drill model and size, hammer or drill energy settings and any changes to those settings during the piles being monitored, depth of the pile being driven or shaft excavated, and blows per foot for the piles monitored. For acoustically monitored piles and shafts, data from the monitoring locations would be post-processed to obtain the following sound measures:

• Maximum peak pressure level recorded for all the strikes associated with each pile or shaft, expressed in dB re 1 μPa. For pile driving and DTH mono-hammer excavation, this maximum value would originate from the phase of pile driving/drilling during which hammer/drill energy was also at maximum (referred to as Level 4);

• From all the strikes associated with each pile occurring during the Level 4 phase these additional measures would be made:

(1) mean, median, minimum, and maximum RMS pressure level in [dB re 1 μPa];

(2) mean duration of a pile strike (based on the 90 percent energy criterion);

(3) number of hammer strikes;

(4) mean, median, minimum, and maximum single strike SEL in [dB re μPa2 s];

• Cumulative SEL as defined by the mean single strike SEL + 10*log10 (number of hammer strikes) in [dB re μPa2 s];

• Median integration time used to calculate SPL RMS;

• A frequency spectrum (pressure spectral density) in [dB re μPa2 per Hertz {Hz}] based on the average of up to eight successive strikes with similar sound. Spectral resolution would be 1 Hz, and the spectrum would cover nominal range from 7 Hz to 20 kHz;

• Finally, the cumulative SEL would be computed from all the strikes associated with each pile occurring during all phases, *i.e.,* soft-start, Level 1 to Level 4. This measure is defined as the sum of all single strike SEL values. The sum is taken of the antilog, with log10 taken of result to express in [dB re μPa2 s].

Hydro-acoustic monitoring would be conducted for at least 10% and up to 10 of each different pile type for each method of installation as shown in Table 13–1 in the application All acoustic data would be analyzed after the project period for pile driving, rotary drilling, and DTH mono-hammer excavation events to confirm SPLs and rate of transmission loss for each construction activity.

Reporting

OMAO would submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal monitoring report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including:

(1) The number and type of piles that were driven and the method (*e.g.,* impact, vibratory, down-the-hole, *etc.*);

(2) Total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving); and

(3) For down-the-hole drilling, duration of operation for both impulsive and non-pulse components.

• PSO locations during marine mammal monitoring; and

• 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.

For each observation of a marine mammal, the following would be reported:

• Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;

• Time of sighting;

• Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

• Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;

• Estimated number of animals (min/max/best estimate);

• Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

• Animal's closest point of approach and amount of time spent in harassment zone;

• Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

• Number of marine mammals detected within the harassment zones, by species; and

• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft report would constitute the final reports. If comments are received, a final report addressing NMFS' comments would be required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, OMAO would report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.*gov), NMFS and to the Northeast Region (GARFO) regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, OMAO would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. OMAO would not resume their activities until notified by NMFS.

The report would include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

OMAO would also provide a hydro-acoustic monitoring report based upon hydro-acoustic monitoring conducted during construction activities. The hydro-acoustic monitoring report would include:

• Hydrophone equipment and methods: recording device, sampling rate, distance (meter) from the pile where recordings were made; depth of water and recording device(s);

• Type and size of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model and energy), and total pile driving duration;

• Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;

• For impact pile driving and/or DTH mono-hammer excavation (per pile): Number of strikes and strike rate; depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 μPa): root mean square sound pressure level (SPL_{rms}); cumulative sound exposure level (SEL_{cum}), peak sound pressure level (SPL_{peak}), and single-strike sound exposure level (SEL_{s-s});

• For vibratory driving/removal and/or DTH mono-hammer excavation (per pile): Duration of driving per pile; mean, median, and maximum sound levels (dB re: 1 μPa): root mean square sound pressure level (SPL_{rms}), cumulative sound exposure level (SEL_{cum}) (and timeframe over which the sound is averaged);

• One-third octave band spectrum and power spectral density plot; and

• General daily site conditions, including date and time of activities, water conditions (*e.g.,* sea state, tidal state), and weather conditions (*e.g.,* percent cover, visibility.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 3, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving activities associated with the OMAO vessel relocation project have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment, and for harbor porpoise, harbor seal, gray seal, and harp seal, Level A harassment, from underwater sounds generated from pile driving and removal, DTH, and rotary drilling. Potential takes could occur if individuals are present in zones ensonified above the thresholds for Level B harassment, identified above, when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for Atlantic white-sided dolphins, short-beaked common dolphins, and harp seals due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for these species. The potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Take by Level A harassment is proposed for 4 species (harbor porpoise, harbor seal, gray seal, and harp seal) as the Level A harassment zones exceed the size of the shutdown zones for specific construction scenarios. Therefore, there is the possibility that an animal could enter a Level A harassment zone without being detected, and remain within that zone for a duration long enough to incur PTS. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take proposed for authorization by Level A harassment is very low for all marine mammal stocks and species. For three species, Atlantic white-sided dolphin, short-beaked common dolphin, and harp seal, NMFS anticipates and proposes to authorize no Level A harassment take over the duration of OMAO's planned activities; for the other four stocks, NMFS proposes to authorize no more than 56 takes by Level A harassment for any stock. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

As described above, NMFS expects that marine mammals would likely move away from an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start. OMAO would also shut down pile driving activities if marine mammals enter the shutdown zones (see Table 14) further minimizing the likelihood and degree of PTS that would be incurred.

Effects on individuals that are taken by Level B harassment in the form of

behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

Since June 2022, an Unusual Mortality Event (UME) has been declared for Northeast pinnipeds in which elevated numbers of sick and dead harbor seals and gray seals have been documented along the southern and central coast of Maine (NOAA Fisheries, 2022). As of October 18, 2022, the date of writing of this notice, 22 grays seals and 230 harbor seals have stranded. However, we do not expect takes that may be authorized under this rule to exacerbate or compound upon these ongoing UMEs. As noted previously, no injury, serious injury, or mortality is expected or will be authorized, and takes of harbor seal and gray seal will be reduced to the level of least practicable adverse impact through the incorporation of the required mitigation measures. For the WNA stock of gray seal, the estimated U.S. stock abundance is 27,300 animals (estimated 424,300 animals in the Canadian portion of the stock). Given that only 448 takes may be authorized for this stock, we do not expect this authorization to exacerbate or compound upon the ongoing UME. For the WNA stock of harbor seals, the estimated abundance is 61,336 individuals. The estimated M/SI for this stock (339) is well below the PBR (1,729) (Hayes *et al.,* 2020). As such, the takes of harbor seal that may be authorized are not expected to exacerbate or compound upon the ongoing UME.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. No ESA-designated critical habitat or biologically important areas (BIAs) are located within the project area. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column and some fish may leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Seasonal nearshore marine mammal surveys were conducted at NAVSTA Newport from May 2016 to February 2017, and several harbor seal haul outs were identified in Narragansett Bay, but no pupping was observed.

For all species and stocks, take would occur within a limited, relatively confined area (Coddington Cove) of the stock's range. Given the availability of suitable habitat nearby, any displacement of marine mammals from the project areas is not expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals within Narragansett Bay and outside the bay along the Rhode Island coasts. Level A harassment and Level B harassment would be reduced to the level of least practicable adverse impact to the marine mammal species or stocks and their habitat through use of mitigation measures described herein.

Some individual marine mammals in the project area, such as harbor seals, may be present and be subject to repeated exposure to sound from pile driving activities on multiple days. However, pile driving and extraction is not expected to occur on every day, and these individuals would likely return to normal behavior during gaps in pile driving activity within each day of construction and in between work days. As discussed above, there is similar transit and haulout habitat available for marine mammals within and outside of the Narragansett Bay along the Rhode Island coast, outside of the project area, where individuals could temporarily relocate during construction activities to reduce exposure to elevated sound levels from the project. Therefore, any behavioral effects of repeated or long duration exposures are not expected to negatively affect survival or reproductive success of any individuals. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed for authorization;
- No Level A harassment of Atlantic white-sided dolphins, short-beaked common dolphins, or harp seals is proposed;
- The small Level A harassment takes of harbor porpoises, harbor seals, gray seals, and hooded seals proposed for authorization are expected to be of a small degree;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Nearby areas of similar habitat value (*e.g.,* transit and haulout habitats) within and outside of Narragansett Bay are available for marine mammals that may temporarily vacate the project area during construction activities;
- The specified activity and associated ensonifed areas do not include habitat areas known to be of special significance (BIAs or ESA-designated critical habitat);
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks, and would not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;

• The lack of anticipated significant or long-term negative effects to marine mammal habitat; and

• The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity would 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.

The instances of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all impacted stocks (Table 13). (In fact, take of individuals is less than 4% of the abundance for all affected stocks.) The number of animals that we expect to authorize to be taken would be considered small relative to the relevant stocks or populations, even if each estimated take occurred to a new individual. Furthermore, these takes are likely to only occur within a small portion of the each stock's range and the likelihood that each take would occur to a new individual is low.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to OMAO for conducting pile driving activities incidental to the NOAA vessel relocation project at Naval Station Newport, RI from February 1, 2024 to January 31, 2025, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed pile driving activities. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

• A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

• The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: October 27, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–23775 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC471]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting via webinar of its Snapper Grouper Recreational Permitting and Reporting Technical Advisory Panel (AP) to discuss reporting and permitting alternatives for the private recreational snapper grouper fishery.

DATES: The AP meeting will be held on Monday, November 21, 2022 from 1 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar. Webinar registration is required. Details are included in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including the webinar registration link, online public comment form, agenda, and briefing book materials will be posted on the Council's website at: *https://safmc.net/workgroups/.* Comments become part of the Administrative Record of the meeting and will automatically be posted to the website and available for Council consideration.

At this meeting, the Advisory Panel will review guidance from the September 2022 Council meeting and further address a series of permit and reporting program questions posed by the Council.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 28, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–23838 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of National Estuarine Research Reserve; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold a public comment period to solicit input on the performance evaluation of the Guana Tolomato Matanzas (GTM) National Estuarine Research Reserve.

DATES: NOAA will consider all written comments received by November 17, 2022.

ADDRESSES: Comments may be submitted to Susie Holst, Evaluator, NOAA Office for Coastal Management, at *Susie.Holst@noaa.gov.*

Written comments received are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personal information, such as account numbers or Social Security numbers, should not be included with the comment. Comments that are not responsive or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Susie Holst, Evaluator, NOAA Office for Coastal Management, by email at *Susie.Holst@noaa.gov* or by phone at (978) 225–3420. Copies of the previous evaluation findings, reserve management plan, and reserve site profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations/.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Susie Holst.

SUPPLEMENTARY INFORMATION: Sections 312 and 315 of the Coastal Zone Management Act (CZMA) require NOAA to conduct periodic evaluations of federally approved national estuarine research reserves. The evaluation process includes holding one or more public meetings, considering written public comments, and consulting with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the State of Florida has met the national objectives, adhered to the reserve's management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–23807 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC455]

Marine Mammals; File No. 26716

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Kathleen Hunt, Ph.D., George Mason University, Department of Biology, 8936 Center St., Manassas, VA 20110, has applied in due form for a permit to import and export marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before December 2, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26716 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to

NMFS.Pr1Comments@noaa.gov. Please include File No. 26716 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Shasta McClenahan, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to import and export narwhal (*Monodon monoceros*) powdered samples of tusks and teeth from the Greenland Institute of Natural Resources laboratories in Copenhagen, Denmark for hormone analyses. Samples from up to 100 individual animals taken in legal Inuit subsistence hunts in Greenland would be imported and exported annually, not to exceed 100 total individuals over the duration of the permit. The requested duration of the permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 24, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–23774 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC498]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) is holding an online meeting, which is open to the public.

DATES: The online meeting will be held on Monday, November 21, 2022, from 1 p.m. to 3 p.m. Pacific Time, or until business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: At its September 2022 meeting, the Pacific Council decided to proceed with an initiative to further the goals and objectives of its Pacific Coast Fishery Ecosystem Plan, the ''Ecosystem and Climate Information for Species, Fisheries, and Fishery Management Plans Initiative.'' The purpose of this initiative is to better integrate climate and ecosystem considerations into the Council's management decision making under its fishery management plans. The Pacific Council tasked the EWG to develop a detailed work plan for conducting the initiative and report back to the Council at its March 2023 meeting. This EWG online meeting is an opportunity to discuss workplan development and solicit input from interested members of Pacific Council advisory bodies and the public. The EWG also may discuss other tasks stemming from Council actions.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: October 28, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–23839 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC435]

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2023 Research Fishery

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

ACTION: Notice of intent; request for applications.

SUMMARY: NMFS announces its request for applications for the 2023 shark research fishery from commercial shark fishermen with directed or incidental shark limited access permits. The shark research fishery allows for the collection of fishery-dependent and biological data for future stock assessments and to meet the research objectives of the Agency. The only commercial vessels authorized to land sandbar sharks are those participating in the shark research fishery. Shark research fishery permittees may also land other large coastal sharks (LCS), small coastal sharks (SCS), smoothhound, and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application to be considered.

DATES: Shark Research Fishery Permit Applications must be received no later than December 2, 2022.

ADDRESSES: Please submit completed applications via email to *NMFS.Research.Fishery@noaa.gov.*

For copies of the Shark Research Fishery Permit Application, please email a request to *NMFS.Research.Fishery@noaa.gov.* Copies of the Shark Research Fishery Permit Application are also available at the highly migratory species (HMS)

website at *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-exempted-fishing-permits*. Please be advised that your application may be released under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at (301) 427–8503 or Delisse Ortiz at (301) 427–8530, or email *NMFS.Research.Fishery@noaa.gov*.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Specifics regarding the commercial shark quotas and the shark research fishery can be found at §§ 635.27(b) and 635.32(f).

The shark research fishery was established, in part, to maintain time series data for stock assessments and to meet NMFS' research objectives. Since the shark research fishery was established in 2008, it has allowed for: the collection of fishery-dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks and collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks; and collection of sharks to determine the weight conversion factor from dressed weight to whole weight.

The shark research fishery allows selected commercial fishermen the opportunity to earn revenue from selling additional sharks, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land sandbar sharks subject to the sandbar quota available each year. The base quota for sandbar sharks is 90.7 metric tons (mt) dressed weight (dw) per year, although this number may be reduced in the event of overharvests. The selected shark research fishery permittees will also be allowed to land other LCS, SCS, smoothhound, and pelagic sharks consistent with any restrictions established on their shark research fishery permit. Generally, the shark research fishery permits are valid only for the calendar year for which they are issued.

One hundred-percent observer coverage is required on shark research fishery trips. The specific 2023 trip limits and number of trips per month will depend on the availability of funding, number of selected vessels, the availability of observers, the available quota, and the objectives of the research fishery, and will be included in the permit terms at time of issuance. The number of participants in the research fishery changes each year. In 2022, five fishermen were chosen to participate. From 2008 through 2022, there has been an average of 6 participants each year with the range from 4 to 11. The number of trips allowed per month can change, but in the last few years participating vessels on average have been able to take one trip per month. The number of trips taken per month are limited by the scientific and research needs of the Agency and the number of NMFS-approved observers available. Participants are also limited on the amount of gear they can deploy on a given set (*e.g.,* number of hooks and sets, soak times, length of longline). These limits may change both between years and during the year depending on research goals and bycatch limits.

In 2022, NMFS split 90 percent of the sandbar and LCS research fishery quotas equally among selected participants, with 16.3 mt dw (35,935 lb dw) of sandbar shark research fishery quota and 9.0 mt dw (19,841 lb dw) of other LCS research fishery quota available to each vessel. The remaining quota was held in reserve to ensure the overall sandbar and LCS research fishery quotas were not exceeded. It is likely NMFS will use this process again for the quota in 2023.

In 2022, NMFS continued to implement a regional dusky bycatch limit, which was first established in 2013, in the shark research fishery, applicable to four regions across the Gulf of Mexico and Atlantic. Under this limit, when four or more dusky sharks have been brought to the vessel dead in a region, shark research fishery permit holders in that region were prohibited from soaking their gear for longer than 3 hours. If, after the change in soak time, three additional dusky shark interactions (alive or dead) were observed, shark research fishery permit holders were prohibited from making a trip in that region for the remainder of the year, unless otherwise permitted by NMFS. Slightly different measures were established for shark research fishery participants in the mid-Atlantic shark closed area in order to allow NMFS observers to place satellite archival tags on dusky sharks and collect other scientific information on dusky sharks while also minimizing any dusky shark mortality.

Previously, shark research fishery permit holders were required to land any dead sharks, except for prohibited species. However, in 2022, shark research fishery permit holders were provided more flexibility and allowed to retain or discard any non-prohibited shark, regardless of condition. All prohibited species were required to be released, unless the observer requested that the shark be retained for research purposes. If the regional non-blacknose SCS, blacknose, and/or pelagic shark commercial management group quotas were closed, then any shark research fishery permit holder fishing in the region was required to discard all of the species from the closed management groups, regardless of condition. All other sharks, except prohibited species, caught and brought to the vessel could be released alive or landed. The vessels participating in the shark research fishery averaged eight trips in 2022, but the timing, and number of the trips varied based on seasonal availability of certain species and quota available.

To participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Permit Application by the deadline noted above (see **DATES**) showing that the vessel and owner(s) meet the specific criteria outlined below.

Research Objectives

Each year, the research objectives are developed by a shark board, which is comprised of representatives within NMFS, including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, the Southeast Regional Office Protected Resources Division, and the HMS Management Division. The research objectives for 2023 are based on various documents, including the May 2020 Biological Opinion on the Operation of the Atlantic Highly Migratory Species Fisheries Excluding Pelagic Longline, as well as recent stock assessments for the U.S. South Atlantic blacknose, U.S Gulf of Mexico blacknose, U.S. Gulf of Mexico blacktip, sandbar, and dusky sharks (all these stock assessments can be found at *http://sedarweb.org/*). The 2023 research objectives are:

- Collect reproductive, length, sex, and age data from sandbar and other

sharks throughout the calendar year for species-specific stock assessments;

- Monitor the size distribution of sandbar sharks and other species captured in the fishery;
- Continue ongoing shark tagging programs for identification of migration corridors and stock structure using dart and/or spaghetti tags;
- Maintain time-series of abundance from previously derived indices for the shark bottom longline observer program;
- Acquire fin-clip samples of all shark and other species for genetic analysis;
- Attach satellite archival tags to endangered smalltooth sawfish to provide information on critical habitat, preferred depth and post-release mortality, consistent with the requirements listed in the take permit issued under section 10 of the Endangered Species Act to the SEFSC Observer Program;
- Attach satellite archival tags to prohibited dusky and other sharks, as needed, to provide information on daily and seasonal movement patterns, and preferred depth;
- Evaluate hooking mortality and post-release survivorship of dusky, hammerhead, blacktip, and other sharks using hook-timers and temperature-depth recorders;
- Evaluate the effects of controlled gear experiments to determine the effects of potential hook changes to prohibited species interactions and fishery yields;
- Examine the size distribution of sandbar and other sharks captured throughout the fishery including in the Mid-Atlantic shark time/area closure off the coast of North Carolina from January 1 through July 31;
- Develop allometric and weight relationships of selected species of sharks (*e.g.,* hammerhead, sandbar, blacktip shark);
- Collect samples such as liver and muscle plugs for stable isotope analysis as a part of a trophic level-based ecosystem study; and
- Examine the feasibility of using electronic monitoring to accurately measure soak times of bottom longline sets. This specific research objective may require participating vessels to have an electronic monitoring system (EM) sensors installed for the duration of the 2023 research fishery. During each research trip, the EM sensors must be operating. The sensors will be removed after the end of the 2023 research fishery.

Selection Criteria

Shark Research Fishery Permit Applications will only be accepted from commercial shark fishermen who hold a current directed or incidental shark limited access permit. While incidental permit holders are welcome to submit an application, to ensure that an appropriate number of sharks are landed to meet the research objectives for this year, NMFS will give priority to directed permit holders as recommended by the shark board. As such, qualified incidental permit holders will be selected only if there are not enough qualified directed permit holders to meet research objectives.

The Shark Research Fishery Permit Application includes, but is not limited to, a request for the following information: type of commercial shark permit possessed; past participation and availability in the commercial shark fishery (not including sharks caught for display); past involvement and compliance with HMS observer programs per § 635.7; past compliance with HMS regulations at 50 CFR part 635; past and present availability to participate in the shark research fishery year-round; ability to fish in the regions and seasons requested; ability to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and ability to carry out the research objectives of the Agency. Preference will be given to those applicants who are willing and available to fish year-round and who affirmatively state that they intend to do so, to ensure the timely and accurate data collection NMFS needs to meet this year's research objectives. An applicant who has been charged criminally or civilly (*e.g.,* issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS-related violation will not be considered for participation in the shark research fishery. In addition, applicants who were selected to carry an observer in the previous 2 years for any HMS fishery, but failed to contact NMFS to arrange the placement of an observer as required per § 635.7, will not be considered for participation in the 2023 shark research fishery. Applicants who were selected to carry an observer in the previous 2 years for any HMS fishery and failed to comply with all the observer regulations per § 635.7 will also not be considered. Exceptions will be made for vessels that were selected for HMS observer coverage but did not fish in the quarter when selected and thus did not require an observer. Applicants who do not possess a valid U.S. Coast Guard safety inspection decal when the application is submitted will not be considered. Applicants who have been non-compliant with any of the HMS observer program regulations in the previous 2 years, as described above, may be eligible for future participation in shark research fishery activities by demonstrating 2 subsequent years of compliance with observer regulations at § 635.7.

Selection Process

The HMS Management Division will review all submitted applications and develop a list of qualified applicants from those applications that are deemed complete. A qualified applicant is an applicant that has submitted a complete application by the deadline (see **DATES**) and has met the selection criteria listed above. Qualified applicants are eligible to be selected to participate in the 2023 shark research fishery. The HMS Management Division will provide the list of qualified applicants without identifying information to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of observers, the availability of qualified applicants, and the available quota for a given year, will randomly select qualified applicants to conduct the prescribed research. Where there are multiple qualified applicants that meet the criteria, permittees will be randomly selected through a lottery system. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, NMFS will notify the selected applicants and issue the shark research fishery permits. The shark research fishery permits will be valid through December 31, 2023, unless otherwise specified. If needed, NMFS will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. NMFS usually holds mandatory captain's meetings before observers are placed on vessels and may hold one for the 2023 shark research fishery in early 2023. Once the fishery starts, the shark research fishery permit holders must contact NMFS or the NMFS-designee to arrange the placement of a NMFS-approved observer for each shark research trip, and in the beginning, if required, to arrange the installation of the specific EM sensor. Selected applicants are required to allow observers the opportunity to perform their duties and assist observers as necessary. At the end of the shark fishery, shark research fishery permit holders must contact NMFS or a

designee to arrange for the removal of the EM sensors.

A shark research fishery permit will only be valid for the vessel and owner(s) and terms and conditions listed on the permit, and, thus, cannot be transferred to another vessel or owner(s). Shark research fishery permit holders must carry a NMFS-approved observer on shark research fishery trips. Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). Applicable retention limits will be based on available quota, number of vessels participating in the 2023 shark research fishery, the research objectives set forth by the shark board, the extent of other restrictions placed on the vessel, and may vary by vessel and/or location. When not operating under the auspices of the shark research fishery, the vessel would still be able to land LCS, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS-approved observer. Additionally, during those times, the vessel would not need to operate the EM sensors.

NMFS annually invites commercial shark permit holders (directed and incidental) to submit an application to participate in the shark research fishery. Permit applications can be found on the HMS Management Division's website at *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-exempted-fishing-permits#shark-research-fishery,* by calling (301) 427–8503, or by emailing *NMFS.Research.Fishery@noaa.gov*. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information by the deadline (see **DATES**), and NMFS' review of applicant information as outlined above. The 2023 shark research fishery will start after the opening of the shark fishery and under available quotas as published in a separate **Federal Register** final rule.

Dated: October 28, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–23850 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC470]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Executive Committee via webinar to discuss the Council budget.

DATES: The meeting will be held on Monday, November 21, 2022, from 10 a.m. until 11 a.m.

ADDRESSES: The meeting will be held via webinar. Webinar registration is required. Details are included in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including the webinar registration link, online public comment form, agenda, and briefing book materials will be posted on the Council's website at: *https://safmc.net/council-meetings/*. Comments become part of the Administrative Record of the meeting and will automatically be posted to the website and available for Council consideration.

At this meeting, the Council's Executive Committee will review the 2022 Council budget status, planned activities for 2023, and the draft 2023 operating budget. The meeting will include a closed session to discuss personnel and contract issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 28, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–23837 Filed 11–1–22; 8:45 am]

BILLING CODE 3510–22–P

INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–007]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a notice in the **Federal Register** notifying the public that the agency is modifying an existing information collection for OMB review and approval and requests public review and comment on the submission. The agencies received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by December 2, 2022.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in

response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: The agency received no comments in response to the sixty (60) day notice published in **Federal Register** volume 87 page 52543 on August 26, 2022. Upon publication of this notice, DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Impact Assessment Questionnaire.

Type of Review: Revision of a currently approved information collection.

Agency Form Number: DFC–007.

OMB Form Number: 3015–0009.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 250.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 375 hours.

Abstract: The DFC Impact Assessment Questionnaire is the principal document used by the agency to initiate the assessment of a potential project's predicted development impact, as well as the project's ability to comply with environmental and social policies, including labor and human rights, as consistent with the agency's authorizing legislation.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2022–23813 Filed 11–1–22; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

Applicable: October 27, 2022.

FOR FURTHER INFORMATION CONTACT: Barbara Smith, Civilian Senior Leader Management Office, 111 Army Pentagon, Washington, DC 20310–0111, email: *Barbara.M.Smith.civ@army.mil* or Phone: (703) 693–1126.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The Department of the Army Performance Review Board will be composed of a subset of the following individuals:

1. Dr. Elizabeth Altendorf, Director of Military Programs, U.S. Army Corps of Engineers
2. Mr. Steve Austin, Assistant Chief of the Army Reserve, Office of the Chief of the Army Reserve
3. Mr. Mark Averill, Administrative Assistant to the Secretary of the Army, Office of the Administrative Assistant to the Secretary of the Army
4. Mr. Young Bang, Principal Deputy Assistant Secretary of the Army (Acquisitions, Logistics and Technology), Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)
5. Mr. Stephen Barth, Deputy Chief of Staff, G–8, U.S. Army Training and Doctrine Command
6. BG Christine Beeler, Commanding General, U.S. Army Contracting Command, U.S. Army Futures Command
7. Ms. Pamela Blechinger, Director, The Research and Analysis Center, U.S. Army Futures Command
8. Ms. Yvette Bourcicot, Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
9. Dr. David Bridges, Senior Research Scientist (Environmental Science), U.S. Army Corps of Engineers
10. LTG Gary Brito, Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–1, Washington, DC
11. Ms. Kimberly Buehler, Director, Small Business Programs, Office of the Secretary of the Army
12. HON Douglas Bush, Assistant Secretary of the Army (Acquisitions, Logistics and Technology), Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)
13. Mr. Michael Cadieux, Director, CCDC Ground Vehicle Systems Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
14. LTG Paul Calvert, Deputy Commanding General, U.S. Army Forces Command
15. HON Michael Connor, Assistant Secretary of the Army (Civil Works), Office of the Assistant Secretary of the Army (Civil Works)
16. Ms. Carla Coulson, Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships), Office of the Deputy Chief of Staff, G–9
17. Ms. Megan Dake, Deputy Assistant Secretary of the Army (Procurement), Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)
18. GEN Edward Daly, Commanding General, U.S. Army Materiel Command
19. LTG Jody Daniels, Chief of Army Reserve, Office of the Chief of Army Reserve
20. Mr. John Daniels, Deputy Assistant Secretary of the Army (Plans, Programs and Resources), Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)
21. Mr. Richard De Fatta, Deputy to the Commander, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command
22. Mr. Mario Diaz, Deputy Under Secretary of the Army (Chair), Office of the Deputy Under Secretary of the Army
23. Ms. Karen Durham-Aguilera, Executive Director, U.S. Army National Cemeteries
24. Dr. Elizabeth Fleming, Deputy Director, Engineer Research and Development Center, U.S. Army Corps of Engineers
25. Mr. Michael Formica, Executive Deputy to the Commander, U.S. Army Training and Doctrine Command
26. Dr. Karl Friedl, Senior Research Scientist (Performance Physiology), U.S. Army Forces Command
27. GEN Paul Funk, Commanding General, U.S. Army Training and Doctrine Command
28. LTG Maria Gervais, Deputy Commanding General/Chief of Staff, U.S. Army Training and Doctrine Command
29. Mr. Timothy Goddette, Deputy Assistant Secretary of the Army (Acquisition Policy & Logistics), Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)

30. Ms. Sue Goodyear, Deputy Chief Executive Officer, U.S. Army Futures Command 28.
31. Mr. Larry Gottardi, Director, Civilian Senior Leader Management Office, Washington, DC
32. BG William Graham, Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers
33. Mr. Ross Guckert, Director, IMCOM Support (Training), Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)
34. Dr. Barton Halpern, Director, Army Research Office, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
35. LTG Charles Hamilton, Deputy Chief of Staff, G–4, Office of the Deputy Chief of Staff, G–4
36. MG Richard Heitkamp, Deputy Chief of Engineers and Deputy Commanding General, U.S. Army Corps of Engineers
37. Mr. David Horner, Director, Information Technology Laboratory, U.S. Army Corps of Engineers
38. Ms. Laura Jankovich, Director of Management/Vice Director of the Army Staff, Office of the Director of the Army Staff
39. Mr. David Kim, Director of Support, U.S. Army Intelligence and Security Command
40. Mr. Daniel Klippstein, Assistant Deputy Chief of Staff, G–9, Office of the Deputy Chief of Staff, G–9
41. Ms. Krystyna Kolesar, Assistant Deputy Chief of Staff, G–8, Office of the Deputy Chief of Staff, G–8
42. Mr. Michael Lacey, Deputy General Counsel (Operations and Personnel), Office of the General Counsel
43. Mr. Jeffrey Langhout, Director, CCDC Aviation and Missile Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
44. Mr. Mark Lewis, Deputy to the Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
45. Mr. Stephen Loftus, Deputy Assistant Secretary of the Army (Cost and Economics), Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
46. Mr. Michael Mahoney, Deputy Assistant Secretary of the Army (Army Review Boards), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
47. LTG Robert Marion, Principal Military Deputy, Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)
48. Mr. David Markowitz, Chief Data Officer and Analytics Officer, Office of the Chief Information Officer
49. Mr. David May, Senior Cyber Intelligence Advisor, U.S. Army Training and Doctrine Command
50. MG Jeffrey Milhorn, Deputy Commanding General for Military and International Operations, U.S. Army Corps of Engineers
51. Ms. Hong Miller, Director, Civilian Human Resources Agency, Office of the Deputy Chief of Staff, G–1
52. Mr. Myles Miyamasu, Principal Deputy Chief Of Staff, G–3 for Operations, U.S. Army Materiel Command
53. Dr. Eric Moore, Deputy to the Commanding General, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
54. Mr. Harry Mornston, Director, Intelligence and Security Directorate, U.S. Army Futures Command
55. Mr. William Nelson, Deputy Assistant Secretary of the Army (Research and Technology)/Chief Scientist, Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology)
56. Mr. Donald Nitti, Deputy to the Commander, U.S. Army Aviation and Missile Command, U.S. Army Materiel Command
57. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition)/ Senior Deputy General Counsel, Office of the General Counsel
58. Ms. Karen Pane, Director of Human Resources, U.S. Army Corps of Engineers
59. Mr. Dovarius Peoples, Director for Corporate Information, U.S. Army Corps of Engineers
60. Dr. Anne Petrock, Senior Research Scientist (Warheads Technology), U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
61. LTG Eric Peterson, Deputy Chief of Staff, G–8, Pentagon, Washington, DC
62. LTG Walter E. Piatt, Director of the Army Staff, Pentagon, Washington, DC
63. Mr. Jamie Pinkham, Principal Deputy Assistant Secretary of the Army (Civil Works), Office of the Assistant Secretary of the Army (Civil Works)
64. Dr. David Pittman, Director, Research and Development/ Director, Engineering Research and Development Center, U.S. Army Corps of Engineers
65. Mr. Ronald Pontius, Deputy to the Commanding General, U.S. Army Cyber Command
66. GEN Andrew Poppas, Commanding General, U.S. Army Forces Command
67. LTG Laura Potter, Deputy Chief of Staff, G–2, Office of the Deputy Chief of Staff, G–2
68. LTG James Rainey, Deputy Chief of Staff, G–3/5/7, Office of the Deputy Chief of Staff, G–3/5/7
69. Ms. Diane Randon, Assistant Deputy Chief of Staff, G–2, Office of the Deputy Chief of Staff, G–2
70. Dr. Peter Reynolds, Senior Research Scientist (Physical Sciences), U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
71. Ms. Anne Richards, The Auditor General, U.S. Army Audit Agency
72. Mr. J. Randall Robinson, Executive Deputy to the Commanding General, U.S. Army Installations Management Command
73. Dr. Dawn Rosarius, Principal Assistant For Acquisition, U.S. Army Medical Research and Development Command, U.S. Army Futures Command
74. Dr. Robert Sadowski, Senior Research Scientist (Robotics), U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
75. Mr. Meriwether Sale, Director of Operations, U.S. Army Intelligence and Security Command
76. Mr. Bryan Samson, Deputy to the Commanding General, U.S. Army Contracting Command, U.S. Army Materiel Command
77. Mr. Craig Schmauder, Deputy General Counsel (Installations, Environment and Civil Works), Office of the General Counsel
78. Mr. James Scofield, Senior Advisor, National Ground Intelligence Center, U.S. Army Intelligence and Security Command
79. HON Caral Spangler, Assistant Secretary of the Army (Financial Management and Comptroller), Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
80. LTG Scott Spellmon, Chief of Engineers and Commanding General, U.S. Army Corps of Engineers
81. LTG Douglas Stitt, Deputy Chief of Staff, G–1, Office of the Deputy Chief of Staff, G–1
82. Mr. Robin Swan, Director, Office of Business Tranformation

83. Mr. Douglas Tamilio, Director, CCDC Soldier Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
84. Mr. Roy Wallace, Assistant Deputy Chief of Staff, G–1, Office of the Deputy Chief of Staff, G–1
85. Mr. Joseph Welch, Director, CCDC C5ISR Center, U.S. Army Combat Capabilities Development Command, U.S. Army Futures Command
86. Ms. Marion Whicker, Executive Deputy to the Commanding General, U.S. Army Materiel Command
87. Mr. Max Wyche, Deputy Chief of Staff, G–1, U.S. Army Materiel Command
88. Ms. Kathryn Yurkanin, Principal Deputy Chief of Legislative Liaison, Office of the Chief, Legislative Liaison

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2022–23795 Filed 11–1–22; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Fiscal Year 2022 Performance Review Board Membership

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) announces the appointment of members to the DON Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) Fiscal Year 2022 Performance Review Board (PRB). The purpose of the PRB is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance-based bonuses and performance-based pay increases.

FOR FURTHER INFORMATION CONTACT: Danielle Dutton, Director, Executive Management Program Office, Manpower and Reserve Affairs at (703) 697–0640 or *danielle.a.dutton.civ@us.navy.mil.*

SUPPLEMENTARY INFORMATION: Composition of the specific PRB is provided below:

Ms. Mary Tompa
Mr. Frederick Stefany
Mr. Andrew Haeuptle
Mr. Scott Bray
Ms. Anne Sandel
Mr. Thomas Rudowsky
Ms. Giao Phan
Mr. Kurt Wendelken
Ms. Deline Reardon
Ms. Catherine Kessmeier
Mr. Mark Romano (HLR)
Mr. Timothy Bridges (HLR)
Mr. Robert Hogue (Chair)

(Authority: 5 U.S.C. 4314(c)(4))

Dated: October 27, 2022.

B.F. Roach,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–23782 Filed 11–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Navy

Certificate of Alternate Compliance for USS CARL M. LEVIN (DDG 120)

AGENCY: Department of the Navy (DoN), Department of the Defense (DoD).

ACTION: Notice of issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS CARL M. LEVIN (DDG 120). Due to the special construction and purpose of this vessel, the Admiralty Counsel of the Navy has determined it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the navigation lights provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective November 2, 2022 and is applicable beginning June 14, 2022.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J. Martin Bunt, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Maritime Law Division (Code 15), 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, 202–685–8386, or *admiralty@navy.mil.*

SUPPLEMENTARY INFORMATION: Background and Purpose. Executive Order 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law)/Admiralty Counsel of the Navy, under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS CARL M. LEVIN (DDG 120) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel:

Annex I, paragraph 3(a), pertaining to the position of the forward masthead light; Annex I, paragraph 2(f)(i) pertaining to the vertical position of the aft masthead light; Annex I, paragraph 3(a), pertaining to the horizontal distance between the masthead lights; Annex I, paragraph 3(c), pertaining to the horizontal distance of the ''task lights'' below the masthead lights; Annex I, paragraph 2(f)(ii), pertaining to the horizontal position of the task lights above the aft masthead light(s) and vertical position of the task lights between the forward masthead light(s) and aft masthead light(s).

The Admiralty Counsel of the Navy further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964.

Dated: October 27, 2022.

B.F. Roach,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–23784 Filed 11–1–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Certificate of Alternate Compliance for USS MARINETTE

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of Issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS MARINETTE (LCS 25). Due to the special construction and purpose of this vessel, the Admiralty Counsel of the Navy has determined it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the navigation lights provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective November 2, 2022 and is applicable beginning October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J. Martin Bunt, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Claims Division (Code 15A), 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, 202–685–5040, or *admiralty@navy.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

Executive Order (E.O.) 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of 72 COLREGS as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the Admiralty Counsel of the Navy, under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS MARINETTE (LCS 25) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel:

Annex I, paragraph 2(a)(i), pertaining to the vertical position of the forward masthead light; Annex I, paragraph 3(a), pertaining to the horizontal position of the forward masthead light; and Annex I, paragraph 3(a), pertaining to the horizontal separation between the forward and aft masthead lights.

The Admiralty Counsel of the Navy further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964.

Dated: October 27, 2022.

B.F. Roach,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–23789 Filed 11–1–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–14–000.
Applicants: San Diego Gas & Electric Company, AES Energy Storage, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of San Diego Gas & Electric Company, et al.
Filed Date: 10/26/22.
Accession Number: 20221026–5236.
Comment Date: 5 p.m. ET 11/16/22

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–7–000.
Applicants: Generate Capital, PBC.
Description: Petition for Declaratory Order of [Generate Capital, PBC].
Filed Date: 10/25/22.
Accession Number: 20221025–5205.
Comment Date: 5 p.m. ET 11/25/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1291–024; ER10–2346–012; ER10–2353–012; ER10–2357–011; ER10–2361–012; ER10–2368–010; ER10–2369–010; ER10–2381–012; ER10–2382–011; ER10–2383–012; ER10–2384–010; ER10–2385–012; ER10–2812–017; ER10–2843–016; ER11–2206–013; ER11–2207–013; ER11–2209–013; ER11–2210–013; ER11–2211–013; ER11–2855–027; ER11–2856–027; ER11–2857–027; ER11–3727–019; ER11–4351–014; ER12–21–025; ER12–1238–010; ER12–1239–010; ER12–1711–019; ER13–1150–011; ER13–1151–011; ER13–1991–023; ER13–1992–023; ER14–2820–010; ER14–2821–010; ER16–853–005; ER16–855–005; ER16–856–005; ER16–857–005; ER16–858–005; ER16–860–005; ER16–861–005; ER18–814–004; ER19–672–004; ER19–843–004; ER19–844–003; ER19–1061–004; ER19–1062–003; ER19–1063–004; ER19–1200–006; ER20–486–004; ER20–2014–001; ER21–1923–002; ER21–1947–002; ER21–2128–001; ER21–2129–001; ER22–529–002.
Applicants: 299F2M WHAM8 SOLAR, LLC, 276FED WHAM8 SOLAR, LLC, 0HAM WHAM8 SOLAR, LLC, NedPower Mount Storm LLC, Black Rock Wind Force, LLC, Rattlesnake Flat, LLC, Golden Fields Solar III, LLC, Clearway Power Marketing LLC, Solar Borrego I LLC, Solar Avra Valley LLC, Solar Alpine LLC, Solar Roadrunner LLC, Solar Blythe LLC, Marsh Landing LLC, Carlsbad Energy Center LLC, Iron Springs Solar, LLC, Granite Mountain Solar West, LLC, Granite Mountain Solar East , LLC, Escalante Solar III, LLC, Escalante Solar II, LLC, Escalante Solar I, LLC, Enterprise Solar, LLC, Spring Canyon Energy III LLC, Spring Canyon Energy II LLC, Desert Sunlight 300, LLC, Desert Sunlight 250, LLC, Alta Wind XI, LLC, Alta Wind X, LLC, High Plains Ranch II, LLC, Crofton Bluffs Wind, LLC, Broken Bow Wind, LLC, Agua Caliente Solar, LLC, Pinnacle Wind, LLC, El Segundo Energy Center LLC, Sun City Project LLC, Sand Drag LLC, Avenal Park LLC, Alta Wind I, LLC, Alta Wind III, LLC, Alta Wind II, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, GenConn Middletown LLC, GenConn Devon LLC, Elkhorn Ridge Wind, LLC, Mountain Wind Power, LLC, Mountain Wind Power II LLC, San Juan Mesa Wind Project, LLC, Walnut Creek Energy, LLC, Taloga Wind, L.L.C, Laredo Ridge Wind, LLC, Wildorado Wind, LLC, Sleeping Bear, LLC, Lookout WindPower LLC, Forward WindPower LLC, GenConn Energy LLC.
Description: Notice of Change in Status of GenConn Energy LLC, et al.
Filed Date: 10/26/22.
Accession Number: 20221026–5235.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER10–1451–007; ER10–1467–008; ER10–1468–008; ER10–1469–008; ER10–1473–007;

ER10–1474–007; ER10–2687–007; ER10–2688–010; ER10–2689–010; ER10–2728–009; ER12–273–003; ER10–1478–009.

Applicants: Pennsylvania Electric Company, Allegheny Energy Supply Company, LLC, Green Valley Hydro, LLC, West Penn Power Company, Potomac Edison Company, Monongahela Power Company, Metropolitan Edison Company, Pennsylvania Power Company, Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Jersey Central Power & Light.

Description: Notice of Change in Status of Jersey Central Power & Light Company, et al.

Filed Date: 10/25/22.

Accession Number: 20221025–5208.

Comment Date: 5 p.m. ET 11/15/22.

Docket Numbers: ER10–1801–007; ER10–1805–008; ER10–2370–006.

Applicants: NSTAR Electric Company, Public Service Company of New Hampshire, The Connecticut Light and Power Company.

Description: Notice of Change in Status of The Connecticut Light and Power Company, et al.

Filed Date: 10/27/22.

Accession Number: 20221027–5056.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER22–728–002.

Applicants: Pegasus Wind, LLC.

Description: Compliance filing: Compliance Filing Under Docket ER22–728 to be effective 3/1/2022.

Filed Date: 10/26/22.

Accession Number: 20221026–5199.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER22–2838–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 4011SO Panhandle Solar & Ponderosa Wind II & OG&E SNUFCA to be effective 11/12/2022.

Filed Date: 10/27/22.

Accession Number: 20221027–5068.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–200–000.

Applicants: Daggett Solar Power 1 LLC.

Description: Baseline eTariff Filing: Baseline New Filing to be effective 12/26/2022.

Filed Date: 10/26/22.

Accession Number: 20221026–5206.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–201–000

Applicants: Southwest Power Pool, Inc.

Description: Petition for Waiver of Tariff Provisions of Southwest Power Pool, Inc.

Filed Date: 10/26/22.

Accession Number: 20221026–5208.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–202–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amended ISA, Service Agreement No. 5849; Queue No. AE2–131 to be effective 10/28/2020.

Filed Date: 10/26/22.

Accession Number: 20221026–5211.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–203–000.

Applicants: Daggett Solar Power 2 LLC.

Description: Baseline eTariff Filing: Baseline New Filing to be effective 12/26/2022.

Filed Date: 10/26/22.

Accession Number: 20221026–5212.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–204–000.

Applicants: ADG Group Inc.

Description: Notice of Cancellation of Market Based Rate Tariff of ADG Group Inc.

Filed Date: 10/26/22.

Accession Number: 20221026–5234.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–205–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: Order No. 676–J Compliance Filing Integrating NAESB WEQ Version 003.3 to be effective 1/27/2023.

Filed Date: 10/27/22.

Accession Number: 20221027–5026.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–206–000.

Applicants: DesertLink, LLC.

Description: Compliance filing: DesertLink LLC Annual TRBAA Filing to be effective 1/1/2023.

Filed Date: 10/27/22.

Accession Number: 20221027–5048.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–207–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Compliance filing: 676–J Order Second Compliance to be effective 1/27/2023.

Filed Date: 10/27/22.

Accession Number: 20221027–5052.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–208–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1276R29 Evergy Metro NITSA NOA to be effective 1/1/2023.

Filed Date: 10/27/22.

Accession Number: 20221027–5057.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–209–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: Compliance filing: Order 676–J Attach Q—2nd Compliance Filing to be effective 12/31/9998.

Filed Date: 10/27/22.

Accession Number: 20221027–5069.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–210–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Compliance filing: 676–J Order Second Compliance to be effective 1/27/2023.

Filed Date: 10/27/22.

Accession Number: 20221027–5071.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–211–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1266R13 Kansas Municipal Energy Agency NITSA and NOA to be effective 1/1/2023.

Filed Date: 10/27/22.

Accession Number: 20221027–5075.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–212–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5823; Queue No. AC2–103 to be effective 10/12/2020.

Filed Date: 10/27/22.

Accession Number: 20221027–5082.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–213–000.

Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: Compliance filing: Duke Energy Florida, LLC submits tariff filing per 35: Order 676–J Compliance Filing to be effective 12/31/9998.

Filed Date: 10/27/22.

Accession Number: 20221027–5083.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–214–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.ADA to be effective 12/30/2022.

Filed Date: 10/27/22.

Accession Number: 20221027–5087.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–215–000.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Amendment: DEF–FPL Rate Schedule No. 221 Cancellation to be effective 12/27/2022.

Filed Date: 10/27/22.

Accession Number: 20221027–5110.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–216–000.

Applicants: West Line Solar, LLC.

Description: § 205(d) Rate Filing: West Line Solar, LLC Shared Facilities Agreement to be effective 10/28/2022.

Filed Date: 10/27/22.
Accession Number: 20221027–5111.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–217–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–10–27_Attachment X Appendix 10 Model Review Changes to be effective 12/27/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5113.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–218–000.
Applicants: New York Independent System Operator, Inc., LS Power Grid New York Corporation I
Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Section 205 filing of LSPGNY proposed depreciation rate updates in Formula Rate to be effective 12/27/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5123.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–219–000.
Applicants: PacifiCorp.
Description: Compliance filing: Second Compliance Filing for Order No. 676–J to be effective N/A.
Filed Date: 10/27/22.
Accession Number: 20221027–5128.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–220–000.
Applicants: Puget Sound Energy, Inc.
Description: Compliance Filing for Order No. 676–J of Puget Sound Energy, Inc.
Filed Date: 10/25/22.
Accession Number: 20221025–5210.
Comment Date: 5 p.m. ET 11/15/22.

Docket Numbers: ER23–221–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: NCMPA1 RS No. 318 Amendment (2023 Confirmation) to be effective 1/1/2023.
Filed Date: 10/27/22.
Accession Number: 20221027–5139.
Comment Date: 5 p.m. ET 11/17/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23840 Filed 11–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15285–000]

Ocean Renewable Power Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 22, 2022, Ocean Renewable Power Company, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Western Passage Tidal Energy Project No. 15285 (project), to be located in the Western Passage Inlet of the Gulf of Maine, near the City of Eastport, Washington County, Maine. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) up to five turbine-generators, including TidGen-80 units and other hydrokinetic tidal energy devices, with a combined installed capacity of 5 megawatts; (2) a mooring system to anchor each turbine-generator to the seabed; (3) an approximately 4,200-foot-long bundled submarine data line and 4.16- to 12.7-kilovolt (kV) transmission line connecting the turbine-generator units to a substation on the shoreline; (5) a 4.16- to 12.7- kV transmission line that is up to 2,600 feet long that connects the station on the shoreline to an existing electric distribution line; and (6) appurtenant facilities. The estimated average annual generation of the Western Passage Project would be up to 7.5 gigawatt-hours. There are no federal lands associated with the project.

Applicant Contact: Mr. Nathan Johnson, Vice President of Development, Ocean Renewable Power Company, Inc., 254 Commercial Street, Suite 119B, Portland, Maine 04101; phone: (207) 772–7707; email: *njohnson@orpc.co*.

FERC Contact: Michael Watts; phone: (202) 502–6123; email: *michael.watts@ferc.gov*.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15285–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://www.ferc.gov/*. Enter the docket number (P–15285) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 27, 2022.

Kimberly D. Bose

Secretary.

[FR Doc. 2022–23848 Filed 11–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL20–3–000]

Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of policy statement.

SUMMARY: On April 21, 2022, the Federal Energy Regulatory Commission (Commission) revised its price index policy set forth in its Policy Statement on Natural Gas and Electric Price Indices (*Revised Policy Statement*). In order to comply with Office of Management and Budget (OMB) Paperwork Reduction Act requirements on Policy Statements, the Commission is establishing a new information collection, FERC–549E, (Price Index Data Providers and Developers) OMB No. 1902–New, to reflect the burden to implement the policy changes in the *Revised Policy Statement* and to reflect the unreported burden arising from the prior policy statements. The Commission is also seeking comment on the burden and cost related to complying with the *Revised Policy Statement.*

DATES: Send comments on or before December 2, 2022.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Evan Oxhorn (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8183, *Evan.Oxhorn@ferc.gov.*

Eric Primosch (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6483, *Eric.Primosch@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. On April 21, 2022, the Commission issued an order in the above-captioned proceeding.[1] Upon further consideration, we determine that the reference in the *Revised Policy Statement* to the existing information collection FERC–549 was in error. That information collection is already in use for a matter unrelated to the *Revised Policy Statement.*[2] The Commission should have referenced an information collection for the prior policy statements.[3] However, when the Commission issued the prior policy statements, the orders did not provide a Paperwork Reduction Act (PRA) burden estimate.[4] In order to comply with Office of Management and Budget (OMB) PRA requirements on Policy Statements, the Commission is establishing a new information collection, FERC–549E, (Price Index Data Providers and Developers) OMB No. 1902–New, to reflect the burden to implement the policy changes in the *Revised Policy Statement* and to reflect the unreported burden arising from the prior policy statements. The Commission is also seeking comment on the burden and cost as shown in this order related to complying with the *Revised Policy Statement.*

2. We clarify that the term ''burden'' as used in paragraphs 24, 29, 36, 37, 47, 56, 58, and 97, as well as the header for section II.c (following paragraph 47), of the *Revised Policy Statement* is not intended to incorporate the statutory definition of burden contained in 5 CFR 1320.3(b) (2021).[5] Rather, the term ''burden'' as used in those paragraphs and section header refers to the practical effect of the *Revised Policy Statement* on entities that have been voluntarily reporting to the Commission. That is, while the Commission's statements on burden properly indicated that changes in the *Revised Policy Statement* would reduce the actual ''burden'' on data providers—as that term is commonly understood, those statements did not incorporate the statutory definition of the term ''burden.'' Nonetheless, the statutory definition of ''burden'' contained in 5 CFR 1320.3(b) (2021) is incorporated in paragraph 110 of the *Revised Policy Statement* and into the new FERC–549E.

3. Because we are establishing a new information collection herein, this order corrects the Commission's statements in the *Revised Policy Statement* related to burden, due to burden now being implemented and reported in the FERC–549E information collection. The *Revised Policy Statement's* effective date remains December 31, 2022.

4. The burden estimates contained within the burden table labeled FERC–549 will now be implemented in FERC–549E. The original table for FERC–549 at paragraph 110 of the *Revised Policy Statement* is being replaced with a new table for FERC–549E (below). Although the FERC–549E shows no relative reduction in burden, that is because there was no burden estimate prepared in 2005. Instead, FERC–549E represents an original total burden that incorporates both the unreported burden arising from the prior policy statements and any decrease in that unreported burden resulting from implementation of the policy changes in the *Revised Policy Statement.* The table reflecting the changes is as follows:

[1] *Actions Regarding the Commission's Pol'y Statement on Price Index Formation & Transparency, & Indices Referenced in Nat. Gas & Elec. Tariffs,* 87 FR 25,237 (Apr. 21, 2022), 179 FERC ¶ 61,036 (2022) (*Revised Policy Statement*).

[2] *See* FERC–549, NGPA Section 311 Transactions and NGA Blanket Certificate Transactions, OMB Control No. 1902–0086.

[3] *Pol'y Statement on Nat. Gas & Elec. Price Indices,* 104 FERC ¶ 61,121, *clarified, Order on Clarification of Pol'y Statement on Nat. Gas & Elec. Price Indices,* 105 FERC ¶ 61,282 (2003), *clarified, Order Further Clarifying Pol'y Statement on Nat. Gas & Elec. Price Indices,* 70 FR 41,002 (July 15, 2005), 112 FERC ¶ 61,040 (2005) (prior policy statements).

[4] *Id.*

[5] *Revised Policy Statement,* 87 FR 25,237, 179 FERC ¶ 61,036.

IMPLEMENTATION OF BURDEN DUE TO THE REVISED POLICY STATEMENT IN DOCKET NO. PL20–3

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden (hrs.) & cost ($) per response (4)	Total annual burden hrs. & total annual cost ($) (3) * (4) = (5)
Burden for FERC–549E					
Data Providers (and their affiliates)—perform biennial self-audit.	[6] 104	.5	52	80 hrs.; $6,960	4,160 hrs.; $361,920.
Data Providers (and their affiliates) that provide next-day transactions.	[7] 96	[8] 249	23,904	4 hrs.; $348	95,616 hrs.; $8,318,592.
Data Providers (and their affiliates) that provide next-month transactions.	[9] 77	[10] 12	924	4 hrs.; $348	3,696 hrs.; $321,552.
Grand Total for Data Providers.	.....	.....	24,880	.....	103,472 hrs.; $9,002,064.
Burden for FERC–549E					
Price Index Developers—re-certify every 7 yrs..	6	0.14	0.84	320 hrs.; $27,840 ..	268.8 hrs.; $23,385.6.
Price Index Developers—code of conduct & confident.; & inform customers.	6	1	6	80 hrs.; $6,960	480 hrs.; $41,760.
Price Index Developers—identify assessed index price vs. calculated.	6	1	6	80 hrs.; $6,960	480 hrs.; $41,760.
Grand Total for Price Index Developers.	.....	.....	12.84	.....	1,228.80 hrs.; $106,905.60.
Total Burden for FERC–549E.	.....	.....	24,892.84	.....	104,700.80 hrs.; $9,108,969.60.

5. The Commission is providing the opportunity for an additional 30-day comment period. The Commission seeks comments on the burden and cost as shown in this order related to complying with the *Revised Policy Statement*.

Title: FERC–549E, Price Index Data Providers and Developers.

OMB Control No.: 1902–NEW.

Respondents: Natural Gas Data Providers (Market Participants That Report Transaction).

6. Comments are due December 2, 2022. Comments must refer to Docket No. PL20–3–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

7. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

8. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

9. No further corrections are warranted pertaining to the *Revised*

[6] A total of 104 data providers (and their affiliates), perform self-audits on the data they provide to price index developers. This figure includes data providers (and their affiliates) that transact solely in the next-day market, data providers (and their affiliates) that transact solely in the next-month market, and data providers (and their affiliates) that transact in both the next-day and next-month market.

[7] This figure includes data providers (and their affiliates) that transact solely in the next-day market and in both the next-day and next-month markets.

[8] This figure (249 annual responses per respondent) relates to reporting on all non-holiday trading days.

[9] This figure includes data providers (and their affiliates) that transact solely in the next-month market and in both the next-day and next-month market.

[10] Respondents who report their next-month transactions to price index developers report their transactions once a month (or 12 times a year).

Policy Statement. FERC–552 remains the same and no changes are needed for that collection.

By the Commission.

Issued: October 27, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23846 Filed 11–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–77–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: Jackson Generation #132120–1 NCNR to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5203.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–78–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Amended Excelerate 510850 eff 11–01–22 to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5215.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–79–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: Annual Penalty Revenue Sharing Report 2022 to be effective N/A.
Filed Date: 10/27/22.
Accession Number: 20221027–5020.
Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: RP23–80–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: Compliance filing: Destin Pipeline Annual Fuel Retention Adjustment to be effective N/A.
Filed Date: 10/27/22.
Accession Number: 20221027–5037.
Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: RP23–81–000.
Applicants: Carolina Gas Transmission, LLC.
Description: § 4(d) Rate Filing: CGT—October 27, 2022 Administrative Change to be effective 12/1/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5043.
Comment Date: 5 p.m. ET 11/8/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23841 Filed 11–1–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10382–01–OW]

Notice of Public Environmental Financial Advisory Board Virtual Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: The United States Environmental Protection Agency (EPA) announces three public meetings of the Environmental Financial Advisory Board (EFAB). The meetings will be conducted in a virtual format via webcast. The purpose of the meetings will be for the EFAB to provide workgroup updates and work products for the Greenhouse Gas Reduction Fund charge. Written public comments may be provided in advance. No oral public comments will be accepted during the meetings. Please see the **SUPPLEMENTARY INFORMATION** section for further details.

DATES: The meetings will be held on:

1. November 17, 2022, from 1 p.m. to 3 p.m. Eastern Time;
2. December 1, 2022, from 1 p.m. to 3 p.m. Eastern Time; and
3. December 15, 2022, from 1 p.m. to 5 p.m. Eastern Time.

ADDRESSES: The meetings will be conducted in a virtual format via webcast only. Information to access the webcast will be provided upon registration in advance of each meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the meetings may contact Tara Johnson via telephone/voicemail at (202) 564–6186 or email to *efab@epa.gov.* General information concerning the EFAB is available at *https://www.epa.gov/waterfinancecenter/efab.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold three public meetings via webcast for the following purpose: Provide workgroup updates and work products for the Board's Greenhouse Gas Reduction Fund charge.

Registration for the Meeting: To register for the meeting, please visit *https://www.epa.gov/waterfinancecenter/efab#meeting.* Interested persons who wish to attend the meeting via webcast must register by November 14, 2022 (for the November 17, 2022, meeting), November 28, 2022 (for the December 1, 2022, meeting), and December 12, 2022 (for the December 15, 2022, meeting). Pre-registration is strongly encouraged.

Availability of Meeting Materials: Meeting materials, including the meeting agenda and briefing materials, will be available on EPA's website at *https://www.epa.gov/waterfinancecenter/efab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to EPA.

Written Statements: Written statements should be received by November 10, 2022 (for the November 17, 2022, meeting), November 25, 2022

(for the December 1, 2022, meeting), and December 8, 2022 (for the December 15, 2022, meeting), so that the information can be made available to the EFAB for its consideration prior to the meeting. Written statements should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the meeting and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2022–23796 Filed 11–1–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0835; FRL–10293–01]

Webinar and Opportunity To Submit Applications for the Assessment of Environmental Performance Standards and Ecolabels for Potential Inclusion in EPA's Recommendations for Federal Purchasing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is expanding the Recommendations of Specifications, Standards and Ecolabels for Federal Purchasing (Recommendations) and is seeking managers of standards development organizations, ecolabel programs, and associated conformity assessment bodies to apply for potential assessment and inclusion in the Recommendations. Interested applicants should electronically submit responses to the scoping questions. Those considering applying are invited to attend a webinar hosted by the EPA's Environmentally Preferable Purchasing (EPP) Program to learn more and ask questions about the assessment process. Once all applications are received, EPA will issue an estimated timeline for full assessments against Sections I through IV of the Framework for the Assessment of Environmental Performance Standards and Ecolabels for Federal Purchasing (Framework). The number of full assessments that EPA can perform will depend on the number of applicants and available resources.

DATES:

Webinar: The Webinar will be held virtually on November 15, 2022, from 1:00 p.m. to 2:30 p.m. EDT. You must register online at *https://www.zoomgov.com/webinar/register/WN_gXXfTIpbS9CLgEQWQHsNKQ* in order to receive the webcast meeting link and audio teleconference information. EPA encourages timely registration, but you can register at any time before and up to the start of the meeting. Once you register, you will promptly receive an email with the necessary webcast meeting information.

Applications: On or before January 1, 2023, interested parties must electronically submit by email to *epp@epa.gov* responses to the scoping questions found at: *https://www.epa.gov/greenerproducts/framework-assessment-environmental-performance-standards-and-ecolabels-federal.* Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Special accommodations: Requests for special accommodations for the Webinar should be submitted on or before November 7, 2022, to allow EPA time to process the requests. For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact Jenna Larkin, listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2022–0835 that is available online at *https://www.regulations.gov*. Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Jenna Larkin, Environmental Protection Specialist, Environmentally Preferable Purchasing Program (7409M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3395; email address: *larkin.jenna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This is directed to the public in general. This notice may be of specific interest to persons who represent standards development organizations, ecolabel programs, and associated conformity assessment bodies that manage product or service environmental performance standards and/or ecolabels that could be considered for use in United States federal sustainable procurement efforts.

B. What action is the Agency taking?

EPA is expanding the Recommendations of Specifications, Standards and Ecolabels for Federal Purchasing. Interested applicants must submit their responses to the scoping questions electronically to *epp@epa.gov* by January 1, 2023. The scoping questions can be found in the docket or at *https://www.epa.gov/greenerproducts/framework-assessment-environmental-performance-standards-and-ecolabels-federal*.

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

This effort directly supports the implementation of several Executive Orders and statutes.

Executive Order 14008, entitled ''Tackling the Climate Crisis at Home and Abroad'' (86 FR 7619, February 1, 2021), directs the Federal government to lead by example and leverage its buying power to ''catalyze private sector investment into, and accelerate the advancement of America's industrial capacity to supply domestic clean energy, buildings, vehicles, and other necessary products and materials''. The expansion of the Recommendations will help to spur this market demand for more sustainable products and services.

Standards and ecolabels included in the Recommendations will also help to meet Executive Order 14030, entitled ''Climate-Related Financial Risk'' (86 FR 27967, May 20, 2021), which directs the Federal Acquisition Regulatory (FAR) Council to consider amending the FAR to ensure that major procurements minimize the risk of climate change.

The implementing instructions for Executive Order 14057, entitled ''Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability'' (86 FR 70935, December 13, 2021), directs EPA to consider expanding the Recommendations to facilitate net-zero emissions procurement and other related sustainable purchasing goals. In addition, it directs federal purchasers to prioritize products and services that address multiple environmental

impacts. After meeting applicable statutory mandates (BioPreferred, SNAP, CPG, ENERGY STAR/FEMP), agencies are directed to buy products and services that meet one or more of the applicable EPA programs, including those meeting the specifications, standards, and ecolabels included in the Recommendations.

The section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 272 note, as well as mandates from the White House Office of Management and Budget (OMB) identified as Circular A–119, entitled ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'', direct federal agencies to use Voluntary Consensus Standards (VCS) in lieu of government-unique standards as a means to carry out policy and procurement objectives except where inconsistent with applicable law or otherwise impractical.

Section 6604(b)(11) of the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* directs EPA to identify opportunities to use Federal Procurement to encourage pollution prevention.

II. Background

The Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58 (November 15, 2021), invests $100 million in the agency's Pollution Prevention program, including a new grant opportunity focused on encouraging products, purchasing, and/or supply chains that are safer, more sustainable, and environmentally preferable. The Recommendations, along with the standards and ecolabels included in the Recommendations, will be referenced, and utilized in the implementation of these new grants.

In addition, the Inflation Reduction Act (IRA), Public Law 117–169 (August 16, 2022), allocates $350 million to the P2 program to establish a labeling program for lower embodied carbon construction materials and a new grant program to provide technical assistance for reducing, measuring, and reporting the embodied carbon of construction materials and products. To support these efforts via the Recommendations, where appropriate, EPA seeks to understand the current state of private sector standards and ecolabels in addressing embodied carbon and other key sustainable acquisition priorities in the construction sector.

A. What are the recommendations of specifications, standards, and ecolabels for Federal purchasing?

The Recommendations help purchasers easily identify credible and effective environmental performance standards/ecolabels/certifications by product/service category for incorporation into federal procurement (*e.g.,* contracts and e-procurement systems). They currently include over 30 product and service categories and more than 40 private sector environmental performance standards and ecolabels. The Recommendations give preference to multi-attribute/lifecycle-based standards and ecolabels that address key impact areas (aka hotspots) and where product conformance is determined by a competent third-party certification body. Federal purchasers are directed by Executive Order 14057 and the Federal Sustainability Plan to procure products and services meeting the Recommendations to help facilitate net-zero emissions procurement and other sustainability goals.

B. What is the framework for the assessment of environmental performance standards and ecolabels?

The Framework, available at *https://www.epa.gov/greenerproducts/framework-assessment-environmental-performance-standards-and-ecolabels-federal,* provides a transparent, fair, and consistent approach to evaluate product and service environmental performance standards and ecolabels for inclusion in the EPA's Recommendations. The EPA began developing the Framework (formerly known as the Guidelines) in 2011 via a multi-stakeholder, consensus-based process, including several public comment periods. The Framework was then piloted in 2015–2016 in three product categories: furniture, flooring (includes carpet), and paints/coatings. Based on lessons learned from the pilot, additional minor edits were made to clarify and streamline the criteria within the Framework and make it applicable to services. An updated version of the Framework was announced and posted to the EPA website in February 2022. That announcement also included details about EPA's intentions to use the Framework to expand the Recommendations into additional product and service categories. More details on the Framework development process are available at *https://www.epa.gov/greenerproducts/framework-development-overview*.

The Framework includes:

- *Scoping Questions:* Assist EPA in planning and budgeting; confirm eligibility and scope before proceeding with full assessment against applicable sections of the Framework.

The four sections of Assessment Criteria include:

- *Section I:* Process for Developing the Standard—Assesses the procedures used to develop, maintain, and update an environmental performance standard, including whether a standard is considered a voluntary consensus standard.
- *Section II:* Environmental Effectiveness of the Standard—Assesses the criteria in the environmental performance standard or ecolabel that support the claim of environmental preferability.
- *Section III:* Conformity Assessment—Assesses the procedures and practices by which products or services are assessed for conformity to the requirements specified by standards and ecolabeling programs.
- *Section IV:* Management of Ecolabeling Programs—Assesses the organizational and management practices of an ecolabeling program.

C. What information is EPA considering during review of the applications?

EPA is interested in performing assessments in purchase categories that support federal goals and mandates regarding climate (*e.g.,* net-zero emissions procurement and low embodied carbon construction materials), safer chemicals (*e.g.,* products that do not contain perfluoroalkyl or polyfluoroalkyl substances (PFAS)), and/or other Administration sustainable acquisition priorities. EPA is particularly interested in expanding into the following sectors:

- Building/construction;
- Infrastructure;
- Landscaping;
- Food and cafeteria services;
- Uniforms/clothing;
- Professional services; and
- Laboratories and healthcare.

Additionally, in purchase categories already included in the Recommendations. See current list of purchase categories covered at *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*.

III. Application Process

A. How do I apply?

Applicants should familiarize themselves with the Framework for the Assessment of Environmental Performance Standards and Ecolabels

found at: *https://www.epa.gov/system/files/documents/2022-05/updated-framework_5-2022.pdf*. If eligible, applicants should download and complete the scoping questions and electronically submit them to *epp@epa.gov* by January 1, 2023. The scoping questions can be found within the docket or at: *https://www.epa.gov/greenerproducts/framework-assessment-environmental-performance-standards-and-ecolabels-federal*. No further responses to Sections I through IV of the Framework are required to be submitted at this time.

B. What to expect after applying?

After the application deadline closes, the EPA will issue an estimated timeline for full assessments against Sections I through IV of the Framework by product/service category within 120 days. For each category being assessed, the EPA will provide further notice and instruction to applicable applicants.

EPA may not perform a full assessment of all standards and/or ecolabels submitted for assessment due to either lack of resources or lack of alignment with Administration priorities. EPA intends for there to be other opportunities to apply for assessment in the future. The timeframe for EPA to complete the assessments will depend on the number of applicants and available resources.

C. What are other ways these assessments will be used?

The General Services Administration (GSA) is partnering with EPA in this effort to better understand the market of building/infrastructure/site project-level standards/ecolabels/certifications so it can provide this information to other agencies. Per section 436(h) of the Energy Independence and Security Act of 2007 (EISA), 42 U.S.C. 17001 *et seq.,* GSA evaluates green building certification systems and provides its findings to the Secretary of Energy who, in consultation with the Department of Defense and GSA, formally identifies the system(s) to be used across the federal government. For more information, please visit *https://www.gsa.gov/gbcertificationreview*.

IV. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, as applicable.

The information collection activities and estimated burdens associated with the assessment of environmental performance standards and ecolabels for federal procurement are approved by OMB pursuant to the PRA under OMB Control No. 2070–0199 (EPA ICR No. 2516.04) through September 30, 2025, unless that approval is extended or renewed prior to that date. This action does not impose any new burden or activities requiring additional OMB approval. This program involves voluntary responses as specified under 42 U.S.C 13101 and 15 U.S.C. 3701, and the annual paperwork burden for the collection associated with the full assessment against sections I through IV of the Framework is estimated to average 8.5 hours per response. For additional details, please see the Information Collection Request (ICR) document that is available in the docket.

Send any comments about the accuracy of the burden estimate, and any suggested methods for further minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any questions to this address.

Authority: 42 U.S.C. 1310.

Dated: October 28, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–23843 Filed 11–1–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10152–02–R10]

Proposed Reissuance of NPDES General Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country in Washington (WAG130000); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of NPDES General Permit and request for public comment; extension of public comment period.

SUMMARY: On September 7, 2022, EPA Region 10 proposed to issue a general permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country in Washington. In response to requests from the regulated community, EPA is extending the end of the public comment period from November 7, 2022 to December 22, 2022.

DATES: The comment period for the notice of proposed reissuance of NPDES General Permit published September 7, 2022 (87 FR 54688), is extended. The EPA must receive comments on or before December 22, 2022.

ADDRESSES: Comments and requests regarding the draft general permit must be submitted to *epar10wd-npdes@epa.gov* with the subject line: Public Comments on WAG130000.

FOR FURTHER INFORMATION CONTACT: Permit documents may be found on the EPA Region 10 website at: *https://www.epa.gov/npdes-permits/npdes-general-permit-federal-aquaculture-facilities-and-aquaculture-facilities-located.*

Copies of the draft general permit and fact sheet are also available upon request. Requests may be made to Audrey Washington at (206) 553–0523. Requests may also be electronically mailed to: *washington.audrey@epa.gov.*

Daniel D. Opalski,

Director, Water Division, Region 10.

[FR Doc. 2022–23800 Filed 11–1–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of modified systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Federal Deposit Insurance Corporation (FDIC) proposes to modify a current FDIC system of records titled FDIC–013, Insured Financial Institution Liquidation Records, by updating the name to FDIC–013, Financial Institution Resolution and Receivership Records to more closely reflect the records processed by this system of records; adding a new routine use to allow members of the public to locate and understand the status of their accounts; and revising the policies and practices for retention and disposal of records to describe the records retention schedules

for the records included in this system of records. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. We hereby publish this notice for comment on the proposed action.

DATES: This action will become effective on November 2, 2022. The routine uses in this action will become effective on December 2, 2022, unless the FDIC makes changes based on comments received. Written comments should be submitted on or before December 2, 2022.

ADDRESSES: Interested parties are invited to submit written comments identified by *Privacy Act Systems of Records* by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/*. Follow the instructions for submitting comments on the FDIC website.
- *Email: comments@fdic.gov*. Include ''Comments-SORN'' in the subject line of communication.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments-SORN, Legal Division, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/*. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Shannon Dahn, Chief, Privacy Program, 703–516–5500, *privacy@fdic.gov*.

SUPPLEMENTARY INFORMATION: The Privacy Act, 5 U.S.C. 552a, at subsection (b)(3), requires each agency to publish, for public notice and comment, significant changes that the agency intends to make to a Privacy Act system of records. The ''FDIC–013, Financial Institution Resolution and Receivership Records,'' system of records supports the receivership, conservatorship, and other regulatory or resolution functions of the FDIC. The records are maintained to: (a) identify and manage loan obligations, assets or liabilities acquired from failed FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or from FDIC-insured financial institutions that were provided assistance by the FDIC, or identified as covered institutions; (b) identify, manage and discharge the obligations to creditors, obligees and other claimants of FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or of FDIC-insured financial institutions that were provided assistance by the FDIC; and (c) support resolution planning, administration, and research in accordance with statutory mandates.

The FDIC proposes to update the name of the system of records from ''FDIC–013, Insured Financial Institution Liquidation Records,'' to ''FDIC–013, Financial Institution Resolution and Receivership Records'' to better align the name with the contents of the system of record.

The FDIC proposes to add a new routine use (18) to allow members of the public access to locate and understand the status of their accounts previously held by a financial institution.

Additionally, after a review of business requirements, the FDIC has updated its retention schedules for specific types of records covered by this system of records. Failed insured depository institution data are maintained for at least ten years after appointment of FDIC as receiver in accordance with approved records retention schedules. Records generated as part of the resolution of a failed insured depository institution are maintained in accordance with approved retention schedules, typically not exceeding fifteen years after the termination of the receivership or as established by state or federal law or court order, if longer. Disposal is by shredding or other appropriate disposal methods.

This notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This modified system will be included in the FDIC's inventory of record systems.

SYSTEM NAME AND NUMBER:

Financial Institution Resolution and Receivership Records, FDIC–013.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at FDIC facilities in Washington, DC; Arlington, VA; and regional offices. Original and duplicate systems may exist, in whole or in part, at secure sites and on secure servers maintained by third-party service providers for the FDIC.

SYSTEM MANAGER(S):

Deputy Director, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW, Washington, DC 20429; 600 North Pearl Street, Suite 700, Dallas, Texas 75201.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, and 13 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, 1822, and 1823) and applicable state laws governing the liquidation of assets and winding-up of the affairs of financial institutions.

PURPOSE(S) OF THE SYSTEM:

The records support the receivership and resolution functions of the FDIC. The records are maintained to: (a) identify and manage loan obligations, assets and liabilities acquired from failed FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or from FDIC-insured financial institutions that were provided assistance by the FDIC; (b) identify, manage and discharge the obligations to creditors, obligees and other claimants of FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or of FDIC-insured financial institutions that were provided assistance by the FDIC; and (c) support resolution planning, administration, and research in accordance with statutory mandates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or were obligors, obligees, or subject to claims of FDIC-insured or covered financial institutions for which the FDIC performs resolution or receivership functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the individual's files held by the FDIC insured, failing,

failed, or covered financial institution, including deposit, loan, or contractual agreements, related documents, and correspondence. The system also contains FDIC asset files, including judgments obtained, restitution orders, and loan deficiencies arising from the liquidation of the obligor's loan asset(s) and associated collateral, if any; information relating to the obligor's financial condition such as financial statements and income tax returns; asset or collateral verifications or searches; appraisals; and potential sources of repayment. FDIC asset files also include intra- or inter-agency memoranda, as well as notes, correspondence, and other documents relating to the liquidation of the loan obligation or asset. FDIC receivership claim files may include all information related to claims filed with the receivership estate by a failed financial institution's landlords, creditors, service providers or other obligees or claimants.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on whom the record is maintained; appraisers retained by the originating financial institution or the FDIC; investigative and/or research companies; credit bureaus and/or services; loan servicers; deposit servicers, court records; references named by the individual; attorneys or accountants retained by the originating financial institution or the FDIC; participants in the obligation(s) of the individual; officers and employees of the financial institution;; and other parties providing services to the FDIC in support of the resolution and receivership functions of the FDIC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, local and foreign authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate agencies, entities, and persons when (a) the FDIC suspects or has confirmed that there has been a breach of the system of records; (b) the FDIC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FDIC (including its information systems, programs, and operations), the Federal Government, or national security; the FDIC and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FDIC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(5) To another Federal agency or Federal entity, when the FDIC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(6) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(7) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(8) To appropriate Federal agencies and other public authorities for use in records management inspections;

(9) To contractors or entities performing services for the FDIC in connection with the liquidation of an individual's obligation(s), including judgments and loan deficiencies or in connection with the fulfillment of a claim filed with the FDIC. Third party contractors include, but are not limited to, asset marketing contractors; loan servicers; appraisers; environmental contractors; attorneys retained by the FDIC; collection agencies; auditing or accounting firms retained to assist in an audit or investigation of the FDIC's resolution activities; grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC;

(10) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(11) To prospective purchaser(s) of the individual's obligation(s), including judgments and loan deficiencies, for the purpose of informing the prospective purchaser(s) about the nature and quality of the loan obligation(s) to be purchased;

(12) To Federal or State agencies, such as the Internal Revenue Service or State taxation authorities, in the performance of their governmental duties, such as obtaining information regarding income, including the reporting of income resulting from a compromise or write-off of a loan obligation;

(13) To participants in the loan obligation in order to fulfill any contractual or incidental responsibilities in connection with the loan participation agreement;

(14) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

(15) To Federal or State agencies or to financial institutions where information is relevant to an application or request by the individual for a loan, grant, financial benefit, or other entitlement;

(16) To Federal or State examiners for the purposes of examining borrowing relationships in operating financial institutions that may be related to an obligation of an individual covered by this system;

(17) To the individual, the individual's counsel or other representatives, insurance carrier(s) or

underwriters of bankers' blanket bonds or other financial institution bonds in conjunction with claims made by the FDIC or litigation instituted by the FDIC or others on behalf of the FDIC against former officers, directors, accountants, lawyers, consultants, appraisers, or underwriters of bankers' blanket bonds or other financial institution bonds; and

(18) To allow members of the public access to a limited portion of the data sufficient to help individuals locate and understand the status of their accounts previously held by a financial institution.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media and in paper format within individual file folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by financial institution number, name of failed or assisted insured or covered institution, name of individual, social security number, and loan number, if applicable.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Failed insured depository institution data are maintained for at least ten years after appointment of FDIC as receiver in accordance with approved records retention schedules. Records generated as part of the resolution of a failed insured depository institution are maintained in accordance with approved retention schedules typically not exceeding fifteen years after the termination of the receivership or as established by state or federal law or court order, if longer. Disposal is by shredding or other appropriate disposal methods.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical, and physical security measures. Administrative safeguards include written guidelines on handling personal information including agency-wide procedures for safeguarding personally identifiable information. In addition, all FDIC staff are required to take annual privacy and security training. Technical security measures within FDIC include restrictions on computer access to authorized individuals who have a legitimate need to know the information; required use of strong passwords that are frequently changed; multi-factor authentication for remote access and access to many FDIC network components; use of encryption for certain data types and transfers; firewalls and intrusion detection applications; and regular review of security procedures and best practices to enhance security. Physical safeguards include restrictions on building access to authorized individuals, security guard service, and maintenance of records in lockable offices and filing cabinets.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov*. Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest or request an amendment to their records in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov*. Requests must specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals wishing to know whether this system contains information about them must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov*. Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 35184 (July 22, 2019).

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 27, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–23805 Filed 11–1–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the FDIC proposes to modify a current FDIC system of records titled, ''Unclaimed Deposit Account Records, FDIC–024.'' FDIC is updating this system of records by adding a new routine use to allow members of the public to locate and understand the status of their accounts. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. We hereby publish this notice for comment on the proposed actions.

DATES: This action will become effective on November 2, 2022. The routine uses in this action will become effective on December 2, 2022, unless the FDIC makes changes based on comments received. Written comments should be submitted on or before the routine uses effective date of December 2, 2022.

ADDRESSES: Interested parties are invited to submit written comments identified by *Privacy Act Systems of Records* by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the FDIC website.
- *Email: comments@fdic.gov.* Include ''Comments-SORN'' in the subject line of communication.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments-SORN, Legal Division, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be

inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Shannon Dahn, Chief, Privacy Program, 703–516–5500, *privacy@fdic.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act, 5 U.S.C. 552a, at subsection (b)(3), requires each agency to publish, for public notice and comment, significant changes that the agency intends to make to a Privacy Act system of records. The ''Unclaimed Deposit Account Records, FDIC–024'' system of records contains deposit account records, including signature cards, last known home address, social security number, name of insured depository institution, relating to unclaimed insured deposits or insured transferred deposits from closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989. FDIC is updating this system of records to add a new routine use (12) to allow members of the public access to a limited portion of the data sufficient to help individuals locate and understand the status of their accounts previously held by a financial institution. This notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This modified system will be included in the FDIC's inventory of record systems.

SYSTEM NAME AND NUMBER:

Unclaimed Deposit Account Records, FDIC–024.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at FDIC facilities in Arlington, Virginia and regional offices. Original and duplicate systems may exist, in whole or in part, at secure sites and on secure servers maintained by third-party service providers for the FDIC.

SYSTEM MANAGER(S):

Financial Managers, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW, Washington, DC 20429, and 600 North Pearl Street, Suite 700, Dallas, Texas 75201.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, and 12 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, and 1822).

PURPOSE(S) OF THE SYSTEM:

The information in this system is used to process inquiries and claims of individuals with respect to unclaimed insured deposit accounts of closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989, and to assist in complying with the requirements of the Unclaimed Deposits Amendments Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified as deposit account owners and individuals claiming to be deposit account holders of unclaimed insured deposits of a closed insured depository institution for which the FDIC was appointed receiver after January 1, 1989.

CATEGORIES OF RECORDS IN THE SYSTEM:

Deposit account records, including signature cards; last known home address; social security number; name of insured depository institution.

RECORD SOURCE CATEGORIES:

Information originates from deposit records of closed insured depository institutions and claimants. After 18 months following institution failure, unclaimed deposit records are transferred to the FDIC from assuming depository institutions. Custody of these records are transferred to State's unclaimed property for a period of 10 years. After 10 years, unclaimed records are returned to FDIC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, local and foreign authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate agencies, entities, and persons when (a) the FDIC suspects or has confirmed that there has been a breach of the system of records; (b) the FDIC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FDIC (including its information systems, programs, and operations), the Federal Government, or national security; the FDIC and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FDIC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(5) To another Federal agency or Federal entity, when the FDIC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(6) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(7) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(8) To appropriate Federal agencies and other public authorities for use in records management inspections;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation

concerning personnel policies, practices, and matters affecting working conditions;

(10) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;

(11) To the appropriate State agency accepting custody of unclaimed insured deposits; and

(12) To allow members of the public access to a limited portion of the data sufficient to help individuals locate and understand the status of their accounts previously held by a financial institution.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media and in paper format within individual file folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic media and paper format are indexed and retrieved by depository institution name, depositor name, depositor social security number, or deposit account number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records of unclaimed deposits are maintained ten years after the termination date of the receivership or as established by the state or Federal law or court order, if longer. Disposal is by shredding or other appropriate disposal methods.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical, and physical security measures. Administrative safeguards include written guidelines on handling personal information including agency-wide procedures for safeguarding personally identifiable information. In addition, all FDIC staff are required to take annual privacy and security training. Technical security measures within FDIC include restrictions on computer access to authorized individuals who have a legitimate need to know the information; required use of strong passwords that are frequently changed; multi-factor authentication for remote access and access to many FDIC network components; use of encryption for certain data types and transfers; firewalls and intrusion detection applications; and regular review of security procedures and best practices to enhance security. Physical safeguards include restrictions on building access to authorized individuals, security guard service, and maintenance of records in lockable offices and filing cabinets.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest or request an amendment to their records in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals wishing to know whether this system contains information about them must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 35184 (July 22, 2019).

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 27, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–23804 Filed 11–1–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–13]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency), as part of its continuing effort to reduce paperwork and respondent burden, invites public comments on a new information collection titled ''Tech Sprints,'' as required by the Paperwork Reduction Act of 1995 (PRA). This information collection has not yet been assigned a control number by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year control number.

DATES: Interested persons may submit comments on or before January 3, 2023.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Tech Sprints, (No. 2022–N–13)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments (No. 2022–N–13).
- *Mail/Hand Delivery:* Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Tech Sprints, (No. 2022–N–13)''. Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *https://www.fhfa.gov.*

Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Liang Jensen, Senior Financial Analyst, *Liang.Jensen@fhfa.gov,* (202) 649–3464; or Angela Supervielle, Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400

Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, requires FHFA to ensure that the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets.[1] Recognizing the significant effects that the regulated entities' potential use of fintech products and innovations could have on the mortgage market and market participants, FHFA has an interest in learning about new and emerging technologies which may have applications in the mortgage space. To obtain information from the public, FHFA plans to conduct a series of competitions called ''Tech Sprints.'' The Tech Sprints will pose ''problem statements'' associated with fintech in the housing finance market and solicit innovative solutions from individuals and entities participating in the Tech Sprint. The Tech Sprint solutions will support the Agency in developing strategies for the regulated entities to advance housing finance fintech in a safe and sound, responsible, and equitable manner.[2]

For each Tech Sprint, FHFA intends to collect information from potential participants through a solicitation for expression of interest to participate in the Tech Sprint, as well as information collected during the Tech Sprint through the solutions to the challenge statements presented. FHFA expects participation from market participants in the housing finance industry and other industries, including without limitation technology companies, mortgage companies, academics, industry groups, and other members of the public.

[1] 12 U.S.C. 4513(a)(1)(B)(ii).

[2] *See, e.g.,* 12 U.S.C. 4501(1) (Congressional recognition that the regulated entities have important public purposes and so need to be managed safely and soundly), and 12 U.S.C. 4501(7) (noting that those public purposes include an affirmative obligation to facilitate financing of affordable housing for low- and moderate-income families).

B. Burden Estimate

FHFA estimates that two Tech Sprints will be conducted each year over the next three years. The total annualized hour burden imposed upon respondents by this information collection will be 5,000 hours, based on the following calculations:

1. Applications

FHFA estimates that the average number of individuals applying to participate in each Tech Sprint over the next three years will be 500, with one response per applicant. The estimated time to complete each application is one hour. Therefore, the estimate for the total annual hour burden for all applications is 1,000 hours (500 applications × 1 hour per application × 2 Tech Sprints per year = 1,000 hours).

2. Tech Sprint Participants

FHFA estimates that each Tech Sprint will have an average of 50 participants. Each participant will spend an average of 40 hours participating in the Tech Sprint. Therefore, the estimate for the total annual hour burden for all Tech Sprint participants is 4,000 hours (50 participants × 40 hours per participant × 2 Tech Sprints per year = 4,000 hours).

C. Public Comments Request

Written comments are requested on: (1) whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on members and project sponsors, including through the use of automated collection techniques or other forms of information technology.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[FR Doc. 2022–23828 Filed 11–1–22; 8:45 am]

BILLING CODE 8070–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086; Docket No. 2022–0001; Sequence No. 9]

Submission for OMB Review; General Services Administration Acquisition Regulation; Proposal To Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement for Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217.

DATES: *Submit comments on or before:* December 2, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments''; or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Marten Wallace, Procurement Analyst, General Services Acquisition Policy Division, 202–286–5807 or via email at *marten.wallace@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition, management, and disposal of real and personal property. These mission responsibilities include developing requirements, solicitation of lease offers and the award of real property lease contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to (1) evaluate whether the physical attributes of offered properties meet the Government's requirements and (2) evaluate the owner/offeror's price proposal. The approval requested includes four versions of the GSA Form 1364; GSA Forms 1364, 1364A, 1364A–

1, and 1364WH. These forms are used to obtain information for offer evaluation and lease award purposes regarding property being offered for lease to house Federal agencies. This includes financial aspects of offers for analysis and negotiation, such as real estate taxes, adjustments for vacant space, and offeror construction overhead fees.

A total of seven lease contract models have been developed to meet the needs of the national leased portfolio. Three of these lease models require offerors to complete a GSA Form 1364 and two require a GSA Form 1217. The GSA Form 1364 versions require the submission of information specifically aligned with certain leasing models and avoids mandating submission of information that is not required for use in evaluation and award under each model. The GSA Form 1217 requires the submission of information specific to the services and utilities of a building in support of the pricing detailed under GSA Form 1364. The forms relate to individual lease procurements and no duplication exists.

The Global Lease model uses the GSA Form 1364. The 1364 captures all rental components, including the pricing for the initial tenant improvements. The global nature of the 1364 provides flexibility in capturing tenant improvement pricing based on either allowance or turnkey pricing, as required by the solicitation.

The Simplified Lease Model uses the GSA Forms 1364A and 1364A–1. This model obtains a firm, fixed price for rent, which includes the cost of tenant improvement construction. Therefore, leases using the Simplified model do not include post-award tenant improvement cost information on the form. The 1364A includes rental rate components and cost data that becomes part of the lease contract and that is necessary to satisfy GSA pricing policy requirements.

The 1364A–1 is a checklist that addresses technical requirements as referenced in the Request for Lease Proposals. The 1364A–1 is separate from the proposal itself and is maintained in the lease file; it does not become an exhibit to the lease. The 1364A–1 may contain proprietary offeror information that cannot be released under the Freedom of Information Act.

The Warehouse Lease Model uses GSA Form 1364WH. This model is specifically designed to accommodate the special characteristics of warehouse space and is optimized for space whose predominant use is for storage, distribution, or manufacturing. The 1364WH captures building characteristics unique to warehouse facilities and allows for evaluation of offers based on either area or volume calculations.

The Global and Warehouse Lease Models use the GSA Form 1217. GSA Form 1217 captures the estimated annual cost of services and utilities and the estimated costs of ownership, exclusive of capital charges. These costs are listed for both the entire building and the area proposed for lease to the Government, broken down into specific categories.

B. Annual Reporting Burden

Respondents: 505.

Responses per Respondent: 3.36 (weighted average).

Total Responses: 1,732.

Hours per Response: 4.11 (weighted average).

Total Burden Hours: 7,150.

C. Public Comments

A 60-day notice published in the **Federal Register** at 87 FR 51423 on August 22, 2022. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–23814 Filed 11–1–22; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235; Docket No. 2022–0001; Sequence No. 13]

Submission for OMB Review; General Services Administration Acquisition Regulation; Federal Supply Schedule Pricing Disclosures and Sales Reporting

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division is submitting a request to the Office of Management and Budget (OMB) to review and approve an extension of a previously approved information collection requirement regarding OMB Control No. 3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting.

DATES: *Submit comments on or before:* December 2, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments''; or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202–445–0390 or email *gsarpolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection is for GSA Federal Supply Schedules (FSS) offerors and contractors subject to certain pricing disclosures and sales reporting requirements. These pricing disclosures and sales reporting requirements are found within the basic version of General Services Administration Acquisition Regulation (GSAR) clause 552.238–80, Industrial Funding Fee and Sales Reporting, and GSAR 515.408(b) and (c). Alternate I of GSAR clause 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts; basic version of GSAR clause 552.238–81, Price Reductions; 552.238–83 Examination of Records by GSA; and 552.238–85, Contractor's Billing Responsibilities, are additional GSAR clauses directly associated with FSS contracts subject to these requirements. This information collection does not apply to GSA FSS offerors and contractors subject to Transactional Data Reporting (TDR) requirements. The burden associated with TDR requirements is covered under information collection OMB control number 3090–0306, Transactional Data Reporting.

B. Annual Reporting Burden

The total estimated annual public cost burden for this information collection is estimated to be $117,802,204.70 The total estimated annual public burden hours resulting from this information collection is 1,452,326.36 hours. These numbers are calculated by adding up the total estimated annual burden cost/hour for each of the following GSAR sections/clauses covered by this

information collection: GSAR section 515.408(b) and (c); basic version of 552.238–80, Industrial Funding Fee and Sales Reporting; Alternate I of 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts; basic version of 552.238–81, Price Reductions; 552.238–83 Examination of Records by GSA; and 552.238–85, Contractor's Billing Responsibilities.

The calculation for some of these numbers account for the variation of burden associated with compliance with a given clause/form/instruction requirement. For example, for some of the calculations GSA is calculating the burden based on the difference between a ''heavier lift'' contract and a ''lighter lift'' contract. Contracts with heavier lifts are those with the characteristics leading to increased burden, such as higher sales volume, higher number of offerings, complexity of their offerings, higher transactions, complexity of transactions, and/or intricate business structures. For the purpose of determining ''lift'', GSA is utilizing the Pareto principle, or ''80/20 rule,'' which states 80 percent of effects come from 20 percent of the population. Accordingly, GSA is categorizing contracts with a heavier lift as 20 percent and those with a lighter lift as those representing 80 percent.

Burden Cost/Hour Calculation

Total estimated burden hour/cost for the basic version of 552.238–80, Industrial Funding Fee and Sales Reporting.

The two primary activities associated with the basic version of 552.238–80, Industrial Funding Fee and Sales Reporting are initial setup and quarterly reporting. The below provides the basis for calculating the burden associated with these two activities. The burden associated with these two activities is then used to calculate the overall burden for this clause.

Initial Setup

○ Estimated hourly rate & job position equivalency. The estimated hourly cost associated with this task is based on the task being accomplished by personnel equivalent to a GS–14, Step 5 employee. A GS–14, Step 5 employee hourly rate for 2022 is $82.51 (''Rest of U.S.'' locality using OPM Salary Table 2022–GS, Effective January 2022).

○ Estimated hours by system for initial set-up. A contractor complying with these requirements will absorb a one-time setup burden for purposes of establishing a reporting system (*i.e.,* automated reporting system vs. manual reporting system). The estimated setup time varies between automated and manual reporting systems. GSA estimates the average one-time initial setup burden is 8 hours for a manual system and 40 hours for an automated system.

Quarterly Reporting

○ Estimated hourly rate & job position equivalency. The estimated hourly cost associated with this task is based on the task being accomplished by personnel equivalent to a GS–12, Step 5 employee. A GS–12, Step 5 employee hourly rate for 2022 is $58.72 (*i.e.,* using ''Rest of U.S.'' locality within the OPM Salary Table for 2022–GS, Effective January 2022).

○ Categorization of contractors by sales revenue. GSA estimates the likelihood of contractors with lower to no reportable sales will spend relatively little time on reporting. In contrast, contractors with more reportable sales will face a higher reporting burden. To account for this difference, GSA is using the below sale revenue categories:

Category 1: No sales activity/revenue (*i.e.,* $0.00).

Category 2: Sales between $0.01 and $25,000.00.

Category 3: Sales between $25,000.01 and $250,000.00.

Category 4: Sales between $250,000.01 and $1 million.

Category 5: Sales over $1 million.

The below table shows the estimated number of FSS contractors by sales revenue category:

FSS CONTRACTORS BY SALES REVENUE CATEGORY

	FSS
Category 1	6,292
Category 2	1,160
Category 3	2,987
Category 4	1,828
Category 5	2,762
Total	15,029

○ Automated system vs. manual reporting system. GSA estimates the likelihood of a contractor creating an automated reporting system increases with a contractor's sales revenue. In contrast, contractors with little to no sales revenue are unlikely to expend the effort needed to establish an automated reporting system. To account for this difference, GSA is using the below table. The below table shows by sales revenue category the estimated percentage of the likelihood of a contractor using a manual reporting system vs automated reporting system:

% OF CONTRACTORS BY TYPE OF REPORTING SYSTEM

[Manual vs. automated]

Sales category	Manual system (%)	Automated system (%)
Category 1	100	0
Category 2	100	0
Category 3	90	10
Category 4	50	50
Category 5	10	90

The following table show the estimated number of FSS contractors by type of reporting system:

ESTIMATED NUMBER OF FSS CONTRACTORS BY TYPE OF REPORTING SYSTEM

[Manual vs. Automated]

	Manual system	Automated system
Category 1	6,292	0

ESTIMATED NUMBER OF FSS CONTRACTORS BY TYPE OF REPORTING SYSTEM—Continued

[Manual vs. Automated]

	Manual system	Automated system
Category 2	1,160	0
Category 3	2,688	299
Category 4	914	914
Category 5	276	2,486
Total	11,330	3,699

○ Estimated quarterly reporting time (hours)—by reporting system and sales revenue category. GSA estimates that the reporting time varies by type of reporting system (*i.e.,* manual or automated) and by respective sales revenue category. The below table shows GSA's estimated quarterly reporting time per sales revenue category and system type:

QUARTERLY REPORTING TIME—HOURS BY TYPE OF REPORTING SYSTEM AND SALES REVENUE CATEGORY

	Manual systems	Automated systems
Category 1	0.25	2.00
Category 2	1.00	2.00
Category 3	2.00	2.00
Category 4	4.00	2.00
Category 5	8.00	2.00

Total estimated burden hour/cost for the basic version of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting.

Initial Setup

Total estimated annual burden hours: 18,240
Total estimated annual cost burden: $1,505,037.12

Quarterly Reporting

Total estimated annual burden hours: 85,484
Total estimated annual cost burden: $5,019,941.05

Total estimated annual burden hour/cost for GSAR 515.408(b) and (c).

Heavier Lift

Estimated # of responses per year: 499
Estimated burden hours per response: × 82.96
Total estimated annual burden hours: 41,397.04
Estimated cost per hour: × $82.51
Total estimate annual cost burden: 3,415,793.96

Lighter Lift

Estimated # of responses per year: 1,996
Estimated burden hours per response: × 64.82
Total estimated annual burden hours: 129,381.72
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $10,675,591.35

Total estimated annual burden hour/cost for Alternate I of 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

Heavier Lift

Estimated # of responses per year: 420
Estimated burden hours per response: × 10.45
Total estimated annual burden hours: 4,389
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $362,149.56

Lighter Lift

Estimated # of responses per year: 1,680
Estimated burden hours per response: × 9.17
Total estimated annual burden hours: 15,406.60
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $1,271,162.27

Total estimated annual burden hour/cost for basic version of GSAR clause 552.238–81, Price Reductions.

The primary activities associated with this clause are training, compliance systems, and notification. As a result, for the purpose of calculating the overall burden associated with this clause, the burden was calculated for each of these activities using first. For some of these activities the heavier lift and lighter lift categorization was used.

Training—Heavier Lift

Estimated # of responses per year: 2,620
Estimated burden hours per response: × 40
Total estimated annual burden hours: 104,800
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $8,647,362.40

Training—Lighter Lift

Estimated # of responses per year: 10,479
Estimated burden hours per response: × 20
Total estimated annual burden hours: 209,580
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $17,293,074.54

Monitoring—Heavier Lift

Estimated # of responses per year: 2,620
Estimated burden hours per response: × 175
Total estimated annual burden hours: 458,500
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $37,832,210.50

Monitoring—Lighter Lift

Estimated # of responses per year: 10,479
Estimated burden hours per response: × 35
Total estimated annual burden hours: 366,765
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $30,262,880.45

Notification

Estimated # of responses per year: 900
Estimated burden hours per response: × 4.25

Total estimated annual burden hours: 3,825
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $315,612.23

Total estimated annual burden hour/cost for GSAR clause 552.238–83 Examination of Records by GSA.

Estimated # of respondents per year: 32
Estimated burden hours per respondent: × 455
Total estimated annual burden hours: 14,560
Estimated cost per hour: × $82.51
Total estimated annual cost burden: $1,201,389.28

Total estimated annual burden hour/cost for GSAR clause 552.238–85, Contractor's Billing Responsibilities, is 0 burden hours/$0.00 burden cost. The reason for zero burden being associated with this clause is because the record keeping requirement contained in this clause does not add any additional burden to what is already captured by the basic version of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting, which is covered by this information collection.

C. Public Comments

A 60-day notice published in the **Federal Register** at 87 FR 51421 on August 22, 2022. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite ''OMB Control No. 3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting'', in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–23815 Filed 11–1–22; 8:45 am]

BILLING CODE 6820–61–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for a Modified OGE Form 201 Request an Individual's Ethics Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for agency and public comments.

SUMMARY: After this first round notice and public comment period, the U.S. Office of Government Ethics (OGE) plans to submit a proposed modified OGE Form 201, Request an Individual's Ethics Documents (OGE Form 201) to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995. The OGE Form 201 is used by persons requesting access to executive branch public financial disclosure reports and other covered records.

DATES: Written comments by the public and agencies on this proposed extension are invited and must be received by January 3, 2023.

ADDRESSES: Comments may be submitted to OGE, by any of the following methods:

Email: usoge@oge.gov. (Include reference to ''OGE Form 201 Paperwork Comment'' in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: McEvan Baum, Assistant Counsel, Washington, DC 20005–3917.

Instructions: Comments may be posted on OGE's website, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: McEvan Baum at the U.S. Office of Government Ethics; telephone: 202–482–9287; TTY: 800–877–8339; Email: *usoge@oge.gov.* An electronic copy of the OGE Form 201 version used to manually submit access requests to OGE or other executive branch agencies by mail or FAX is available in the Forms Library section of OGE's website at *http://www.oge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Baum. An automated version of the OGE Form 201, also available on OGE's website, enables the applicant to electronically fill out, submit and receive access to copies of the public financial disclosure reports certified by the U.S. Office of Government Ethics.

SUPPLEMENTARY INFORMATION:

Title: OGE Form 201 Request an Individual's Ethics Documents.

Agency Form Number: OGE Form 201.

OMB Control Number: 3209–0002.

Type of Information Collection: Extension with modifications of a currently approved collection.

Type of Review Request: Regular.

Respondents: Individuals requesting access to executive branch public financial disclosure reports and other covered records.

Estimated Annual Number of Respondents: 19,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 3,167 hours.

Abstract: The OGE Form 201 collects information from, and provides certain information to, persons who seek access to OGE Form 278 Public Financial Disclosure Reports, including OGE Form 278–T Periodic Transaction Reports, and other covered records. The form reflects the requirements of the Ethics in Government Act, subsequent amendments pursuant to the STOCK Act, and OGE's implementing regulations that must be met by a person before access can be granted. These requirements include the address of the requester, as well as any other person on whose behalf a record is sought, and acknowledgement that the applicant is aware of the prohibited uses of executive branch public disclosure financial reports. See 5 U.S.C. appendix 105(b) and (c) and 402 (b)(1) and 5 CFR 2634.603(c) and (f). Executive branch departments and agencies are encouraged to utilize the OGE Form 201 for individuals seeking access to public financial disclosure reports and other covered documents. OGE permits departments and agencies to use or develop their own forms as long as the forms collect and provide all of the required information.

OGE currently has OMB approval for two versions of the form, a PDF version and OGE's online application.

OGE is proposing several changes to OGE Form 201, with the goals of (1) making the form more appropriate for use throughout the executive branch, and (2) providing applicants with clarifying information about the use of the form. The changes were developed with feedback from agency ethics officials across the executive branch, through a listening session and written comments. To the extent appropriate, the comments and feedback from agency ethics officials have been incorporated into the proposed revised form. The proposed changes are summarized below.

OGE recently made nonsubstantive changes to the electronic version of the Form 201, simplifying the name from ''Request to Inspect or Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records'' to ''Request an Individual's Ethics Documents.'' OGE now proposes to apply the new name to the PDF version as well, so that all

versions of the form will have the same name.

OGE proposes adding approximately two pages of supplemental information to the PDF version of the form in order to provide guidance to applicants regarding the use of the form. Specifically, the supplemental information provides guidance on which documents can be obtained by request via the form (including a description of such documents), which documents can be obtained from OGE as opposed to an individual's employing agency, and when and how to submit a request using the PDF version of the form. The changes avoid the use of the term ''other covered records,'' which was a point of confusion for applicants in the past. Instead, the supplemental information simply describes all documents available through use of the form, including a chart. OGE proposes to remove section III because that information will now be found more easily in the supplemental information.

OGE proposes to make a number of changes to the PDF version of the form to align the form with plain language principles and to improve user experience. These changes include: adding the title to the face of the PDF version of the form; removing OGE's name, address, telephone number and fax number from the top of the form; adding ''Your'' in front of the name, mailing address, occupation, and telephone number fields; adding parentheticals containing the word ''required'' next to required fields; grouping fields 3 and 3a in section I together; and reformatting section I in order to make it easier for applicants to specify the type of report and time period in field 5, if applicable, and provide examples to the applicants in the instructions. OGE also proposes to add a continuation page to allow more space for fields 5 and 5a.

OGE proposes moving the ''Agency Use Only'' box on the PDF version of the form to the end of section II (''Notice of Action''), marking it ''optional,'' and expanding it. Moving it to the end of section II will group together all portions of the form to be completed by the applicant, thereby minimizing the potential for missing information or omitting a signature that would delay processing. The proposed additions add space for information on requests that are not filled and additional notes in order to provide more information to applicants about why a document was or was not released. Likewise, OGE proposes to remove the checkbox in section II indicating that ''Copies of the report(s) or other covered record(s) you requested are enclosed'' as duplicative of the information in the revised ''Agency Use Only'' box.

OGE proposes changing the applicant choices on all versions of the form by changing ''private citizen'' to ''member of the public;'' combining ''law firm'' and ''other private organization'' into simply ''private organization;'' and adding an option for ''other.'' The purpose of these changes is to modernize the language and make selecting a choice easier for the applicant.

In the applicant signature section on all versions of the form, OGE proposes to broaden language to address all potential requested records. The revised language would read: ''I am aware that in completing this official government form that any intentionally false or misleading statement, certification, or response provided in this form is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. 1001.''

Finally, on the PDF version of the form, OGE proposes adding the option for applicants to provide an email address in lieu of a mailing address, while also removing the ''Pick-up'' option. These changes are based on agency feedback that almost every request is filled using email and that few agencies allow for applicants to pick up documents. Use of email also helps with record keeping and cuts down significantly on processing time, allowing applicants to receive their documents quickly. OGE also proposes to remove the checkbox for the ''Picked up by'' from section II, as that option would be eliminated. The online application currently requires applicants to provide an email address and applicants who use the online application may only receive a response via email. OGE now proposes to remove the unnecessary street address field from the online application, to reduce the information burden on applicants.

Request for Comments: Agency and public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for and included with the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Specifically, OGE seeks public comment on the following:

- What problems do you have using the form?
- Are there sections of the form or instructions that are unclear?
- Is there information provided that is confusing?
- What additional information would be helpful?

Approved: October 28, 2022.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2022–23824 Filed 11–1–22; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-23–1286]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Reporting of the Rape Prevention and Education Program (RPE)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March, 1 2022 to obtain comments from the public and affected agencies. CDC received one non-substantive comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Annual Reporting of the Rape Prevention and Education (RPE) Program (OMB Control No. 0920–1286, Exp. 3/31/2023)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

This is a Revision request for the currently approved ''Annual Reporting of the Rape prevention and Education (RPE) Program'' (OMB Control No. 0920–1286, Exp. 03/31/2023). This Revision is being requested to continue to collect information related to implementation and outcomes annually from 53 recipients or their designated delegates funded through the funding opportunity, CE19–1902. Sexual violence (SV) is a major public health problem: one in three women and one in four men experienced sexual violence involving physical contact during their lifetimes. Nearly one in five women and one in 38 men have experienced completed or attempted rape. Sexual violence starts early: one in three female and one in four male rape victims experienced it for the first time between 11–17 years old. CDC's Division of Violence Prevention (DVP) provides national leadership in prevention SV perpetration and victimization before it begins, (*i.e.,* primary prevention). DVP administers the RPE Program, which provides funding to health departments in all 50 states, the District of Columbia (DC), Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of Northern Mariana Islands.

The RPE Program is the principal federally funded program focused on SV primary prevention. Collecting information about the implementation and outcomes of CE19–1902 cooperative agreement through the online data system, DVP Partners Portal, is crucial to informing SV prevention nationally; enhancing accountability of the use of federal funds; providing timely program reports and responses to information requests, such as Congressional requests mandated by the authorizing legislation; improving real-time communications between CDC and RPE recipients; and strengthening CDC's capacity to provide responsive data-driven technical assistance and to monitor and evaluate recipients' progress and performance.

Information will be collected annually from recipients through the online data system, DVP Partners Portal. The DVP Partners Portal is organized by forms, which are further organized by sections and sub-sections. Recipients and program staff will be able to review information reported in previous years within the DVP Partners Portal per their authenticated access to the Portal. In addition, information from previous reports will be carried over and pre-populated for the next annual reporting as appropriate. Thus, with DVP Partners Portal most of the burden is required during the initial population of information (Year 1), Recipients will only need to enter changes, provide progress information, and add new information after Year 1.

CDC will use the information to be collected to do the following:

- Enhance accountability of the use of federal funds;
- Provide timely program reports and responses to information request;
- Improve real-time communications between CDC and recipients;
- Strengthen CDC's capacity to provide responsive and data-driven TA;
- Strengthen CDC's capacity to monitor and evaluate recipients' progress and performance towards activities required as part of the cooperative agreement;
- Allow both CDC and recipients to track their own state activities and outcomes, and ensure alignment between their state and local activities;
- Generate a variety of routine and customizable reports specifically for each recipient and in aggregate nationally for CDC stakeholders;

CDC requests approval for an estimated 424 annual burden hours. CDC is requesting a one-year approval. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
RPE-funded Health Departments (State, DC, and Territories) and their Designated Delegates.	Annual Reporting—Initial Population.	53	1	4
	Annual Reporting—Subsequent Reporting.	53	2	2

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–23833 Filed 11–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0446]

Expanded Access to Investigational Drugs for Treatment Use: Questions and Answers; 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 revised draft guidance for industry entitled ''Expanded Access to Investigational Drugs for Treatment Use: Questions and Answers.'' Since 2017, FDA has received many questions concerning implementation of the regulatory requirements of the expanded access program. In addition, FDA developed recommendations for fulfilling the new requirements for expanded access submissions promulgated in the 21st Century Cures Act (Cures Act) (2016) and the FDA Reauthorization Act of 2017 (FDARA). FDA is providing this guidance in a question-and-answer format, addressing the most recent frequently asked questions and sharing recommendations to fulfill the new statutory requirements. This guidance revises the guidance of the same title issued in June 2016 and updated in October 2017.

DATES: Submit either electronic or written comments on the draft guidance by January 3, 2023 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–2013–D–0446 for ''Expanded Access to Investigational Drugs for Treatment Use: Questions and Answers.'' 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: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993–0002, 240–402–8926; 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 revised draft guidance for industry entitled ''Expanded Access to Investigational Drugs for Treatment Use: Questions and Answers.'' Under the expanded access regulation provided in 21 CFR part 312, subpart I, FDA allows

use of investigational drugs for treatment of patients with serious or immediately life-threatening diseases or conditions who lack therapeutic alternatives. FDA issued a guidance in 2016 (updated in 2017) in a question-and-answer format to respond to the most frequently asked questions on various provisions of the regulation regarding expanded access.

The Cures Act added section 561A to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb–0) to include new requirements regarding expanded access. Under section 561A of the FD&C Act, a manufacturer or distributor of one or more investigational drugs for the diagnosis, monitoring, or treatment of one or more serious diseases or conditions is required to make its policy for evaluating and responding to expanded access requests (expanded access policy) readily available to the public, such as by posting the policy on a publicly available website. In addition, FDARA (Pub. L. 115–52) amended the FD&C Act to require that the expanded access policy for an investigational drug be posted by the earlier of (1) the first initiation of a phase 2 or phase 3 study with respect to such investigational drug or (2) within 15 days after the drug receives a fast track, breakthrough, or regenerative advanced therapy designation.

This revised draft guidance includes responses to stakeholder questions received since publication of the updated final guidance in 2017 and includes the Agency's recommendations related to new requirements of the Cures Act and FDARA that are related to expanded access. This guidance revises the guidance for industry of the same title issued in June 2016 and updated in October 2017. Significant changes to the 2017 version of the guidance include additional recommendations related to institutional review board review, informed consent, and new requirements established by the Cures Act and FDARA.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The revised draft guidance, when finalized, will represent the current thinking of FDA on ''Expanded Access to Investigational Drugs for Treatment Use: Questions and Answers.'' 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 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; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information under the Expanded Access regulations (21 CFR 312.300 through 312.320) have been approved under OMB control number 0910–0814; and the collections of information in 42 CFR part 11 have been approved under OMB control number 0925–0586.

III. Electronic Access

Persons with access to the internet may obtain the revised 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/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: October 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23785 Filed 11–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0796]

Agency Information Collection Activities; Proposed Collection; Comment Request; Testing Communications by the Food and Drug Administration's Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on studies regarding communications by FDA's Center for Devices and Radiological Health (CDRH). This information will be used to explore concepts of interest and assist in the development and modification of communication messages and campaigns to fulfill the Agency's mission to protect the public health.

DATES: Either electronic or written comments on the collection of information must be submitted by January 3, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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–2013–N–0796 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Testing Communications Regarding Products Regulated by FDA's Center for Devices and Radiological Health.'' Received comments, those filed in a timely manner (see **ADDRESSES**), 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.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Testing Communications by FDA's Center for Devices and Radiological Health

OMB Control Number 0910–0678—Extension

FDA is authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) to conduct educational and public information programs. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. Improving communications by FDA's CDRH involves many research methods, including individual indepth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about product use. Knowledge of consumer, caregiver, and healthcare professional decision-making processes will provide a better understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels.

Second, as initial testing, the collected information will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, the collected information will allow FDA to ascertain the effectiveness of the messages and the distribution method in achieving the objectives of the message campaign. Evaluation of message campaigns is a vital link in continuous improvement of communications at FDA.

FDA expects to conduct studies under this generic information collection using a variety of research methods. We estimate that the burden to respondents will average 16 minutes each (varying from 5 minutes to 90 minutes). FDA estimates the burden of this collection of information based on prior experience with the various types of data collection methods described earlier.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] [2]

Type of respondent/survey	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
General Public					
Individual indepth interviews	420	1	420	0.75 (45 minutes)	315
General public focus group interviews.	288	1	288	1.50 (1 hour, 30 minutes)	432
Intercept interviews: central location	200	1	200	0.25 (15 minutes)	50
Intercept interviews: telephone	4,000	1	4,000	0.08 (5 minutes)	320
Self-administered surveys	2,400	1	2,400	0.25 (15 minutes)	600
Gatekeeper reviews	400	1	400	0.50 (30 minutes)	200
Omnibus surveys	1,200	1	1,200	0.17 (10 minutes)	204
Total (general public)					2,121
Healthcare Professional					
Healthcare professional individual indepth interviews.	72	1	72	0.75 (45 minutes)	54
Healthcare professional focus group interviews.	144	1	144	1.50 (1 hour, 30 minutes)	216
Total (healthcare professional)					270
Total (overall)					2,391

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded.

Over the next 3-year approval period, we anticipate increasing our capability to conduct more communication surveys, which aligns with CDRH's strategic priorities. We have adjusted our burden estimates accordingly. Additionally, we have added an estimated hour burden for ''healthcare professional individual indepth interviews.'' These changes reflect an overall increase of 315 burden hours and a corresponding increase of 276 responses annually.

Dated: October 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23781 Filed 11–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2336]

Assessing User Fees Under the Over-the-Counter Monograph Drug User Fee Program; 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 ''Assessing User Fees Under the Over-the-Counter Monograph Drug User Fee Program.'' This guidance provides stakeholders with information regarding FDA's implementation of the Over-the-Counter Monograph Drug User Fee Program authorized under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on the draft guidance by January 3, 2023 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 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–2022–D–2336 for ''Assessing User Fees Under the Over-the-Counter Monograph Drug User Fee Program.'' 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 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. 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: Over-the-Counter Monograph Drug User Fee Staff, Division of User Fee Management, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Silver Spring, MD 20993, 301–796–7900, *CDERCollections@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Assessing User Fees Under the Over-the-Counter Monograph Drug User Fee Program.'' This guidance provides stakeholders with information regarding FDA's implementation of the Over-the-Counter Monograph Drug User Fee Program. On March 27, 2020, new provisions were added to the FD&C Act (21 U.S.C. 9) by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136). Among these new FD&C Act provisions were sections 744L (21 U.S.C. 379j–71) and 744M (21 U.S.C. 379j-72), which authorize FDA to assess and collect user fees from qualifying manufacturers of over-the-counter (OTC) monograph drugs and submitters of OTC Monograph Order Requests (OMOR), other than OMORs for certain safety changes. FDA refers to the OTC Monograph Drug User Fee program as ''OMUFA'' throughout this document. The draft guidance also describes the types of OMUFA fees authorized by the FD&C Act, the due dates of the fees, and explains the exceptions to certain fees. In addition, this guidance describes the process for submitting fee payments to FDA, the consequences for failing to pay the required fees, and the process for submitting refund requests or disputing FDA's assessment of OMUFA fees. This guidance does not address how FDA calculates OMUFA fee rates for each fiscal year, nor does it address FDA's implementation of other user fee programs (*e.g.,* under the Prescription Drug User Fee Act, Biosimilar User Fee Act, or Generic Drug User Fee Amendments).

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 ''Assessing User Fees Under the Over-the-Counter Monograph Drug User Fee Program.'' 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 the over-the-counter drug user fee program have been approved under OMB Control Number 0910–0340. The collection of information associated with completing and submitting FDA 3913 (User Fee Payment Refund Request) is approved under OMB control number 0910–0805.

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/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23791 Filed 11–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0669]

S1B(R1) Addendum to S1B Testing for Carcinogenicity of Pharmaceuticals; International Council for Harmonisation; 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 ''S1B(R1) Addendum to S1B Testing for Carcinogenicity of Pharmaceuticals.'' The guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH), formerly the International Conference on Harmonisation. The final guidance expands the testing scheme for assessing human carcinogenic risk of pharmaceuticals by introducing an additional approach that is not described in the original S1B Guideline. The final guidance is intended to offer an integrative approach that provides specific weight of evidence criteria that inform whether a 2-year rat study is

likely to add value in completing a human carcinogenicity risk assessment. The Addendum also adds a plasma exposure ratio-based approach for setting the high dose in the rasH2-Tg mouse model, while all other aspects of the recommendations for high-dose selection in ICH guidance for industry ''S1C(R2) Dose Selection for Carcinogenicity Studies of Pharmaceuticals'' still apply.

DATES: The announcement of the guidance is published in the **Federal Register** on November 2, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0669 for ''S1B(R1) Addendum to S1B Testing for Carcinogenicity of Pharmaceuticals.'' 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; or the 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. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Timothy McGovern, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6426, Silver Spring, MD 6426, 240–402–0477 *Timothy.McGovern@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, *Stephen.Ripley@fda.hhs.gov.*

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''S1B(R1) Addendum to S1B Testing for Carcinogenicity of Pharmaceuticals.'' The guidance was prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of the ICH are the FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare;

and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (*https://www.ich.org/*).

ICH works by involving technical experts from both regulators and industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In the **Federal Register** of October 5, 2021 (86 FR 54982), FDA published a notice announcing the availability of a draft guidance entitled ''S1B(R1) Addendum to S1B Testing for Carcinogenicity of Pharmaceuticals.'' The notice gave interested persons an opportunity to submit comments by December 6, 2021.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies on August 4, 2022.

The final guidance provides guidance on expanding the testing scheme for assessing human carcinogenic risk of pharmaceuticals by introducing an additional approach that is not described in the original S1B Guideline and also adds a plasma exposure ratio-based approach for setting the high dose in the rasH2-Tg mouse model. This guidance finalizes the draft guidance issued on October 5, 2021.

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. 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; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov*.

Dated: October 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23787 Filed 11–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Request for Public Comment on Proposed Update to the Bright Futures Periodicity Schedule as Part of the HRSA-Supported Preventive Services Guidelines for Infants, Children, and Adolescents

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice seeks public comment on a proposed update to the Periodicity Schedule of the Bright Futures Recommendations for Pediatric Preventive Health Care (''Bright Futures Periodicity Schedule''), as part of the HRSA-supported preventive service guidelines for infants, children, and adolescents. Please see *https://mchb.hrsa.gov/maternal-child-health-topics/child-health/bright-futures.html* for additional information. Specifically, the proposed update to the Bright Futures Periodicity Schedule is to extend the upper age range for the existing universal Human Immunodeficiency Virus (HIV) screening recommendation.

In the Bright Futures Periodicity Schedule, a ''dot'' with an ''arrow'' indicates a ''range during which a service may be provided.'' In the current Bright Futures Periodicity Schedule, the age range recommended for which adolescents may be provided universal screening for HIV is between the 15-year visit and 18-year visit. The proposed update to the Bright Futures Periodicity Schedule would indicate that the recommended age range for which adolescents may be provided universal screening for HIV is between the 15-year visit and 21-year visit. The proposed update also includes an accompanying footnote to provide updated information from the American Academy of Pediatrics (AAP) about more frequent screening for youth assessed as at high risk of HIV infection.

DATES: Members of the public are invited to provide written comments no later than December 2, 2022. All comments received on or before this date will be reviewed and considered by the Bright Futures Periodicity Schedule Working Group and provided for further consideration by HRSA in determining the recommended updates that it will support.

ADDRESSES: Members of the public interested in providing comments can do so by accessing the public comment web page at: *https://mchb.hrsa.gov/maternal-child-health-topics/child-health/bright-futures.html.*

FOR FURTHER INFORMATION CONTACT: Bethany Miller, HRSA, Maternal and Child Health Bureau, email: *BMiller@hrsa.gov,* telephone: (301) 945–5156.

SUPPLEMENTARY INFORMATION: The Bright Futures Periodicity Schedule is maintained through a national cooperative agreement, the Bright Futures Pediatric Implementation Program, with the AAP. If accepted by HRSA, the proposed update to the Bright Futures Periodicity Schedule will provide additional clinical guidance to providers and, under the Public Health Service Act and pertinent regulations, would require non-grandfathered group health plans and health insurance issuers to provide coverage without cost-sharing of such updated preventive care and screenings.

When its preventive care and screening recommendations have been

accepted by HRSA, the Bright Futures Periodicity Schedule is part of the HRSA-supported preventive service guidelines for infants, children, and adolescents. The development of the Periodicity Schedule is maintained through a national cooperative agreement, the Bright Futures Pediatric Implementation Program, with AAP. Under Section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13) and pertinent regulations, non-grandfathered group health plans and health insurance issuers must provide coverage, without cost sharing, for certain preventive services for plan years (in the individual market, policy years) that begin on or after the date that is 1 year after the date the recommendation or guideline is issued. These include HRSA-supported preventive health services provided for in the Bright Futures Periodicity Schedule as part of the HRSA-supported preventive services guidelines for infants, children, and adolescents.

Through the cooperative agreement with the AAP, the Bright Futures Pediatric Implementation Program is required to administer a process for developing and regularly recommending, as needed, updates to the Bright Futures Periodicity Schedule through a process that includes a comprehensive, objective, and transparent review of available evidence that incorporates opportunity for public comment. Accordingly, the Program reviews the evidence to determine whether updates are needed, develops recommended updates, seeks and considers public comments, and makes recommendations to HRSA.

The AAP convenes a panel of pediatric primary care experts, the Bright Futures Periodicity Schedule Working Group, to review the latest evidence, develop draft recommended updates, seek and consider public comment, and propose updates to the Bright Futures Periodicity Schedule. Comments received from the public will be reviewed and discussed by the Bright Futures Periodicity Schedule Working Group.

The proposed update to the Bright Futures Periodicity Schedule would indicate that the recommended age range for which adolescents may be provided universal screening for HIV is between the 15-year visit and 21-year visit. In the current Bright Futures Periodicity Schedule, the age range recommended for which adolescents may be offered universal screening for HIV is between the 15-year visit and 18-year visit. Early detection of an infection with HIV in adolescents and young adults can lead to improved health outcomes and reduce the further spread of HIV by individuals who are not yet aware they are infected. Universal screening is a type of screening that a provider may recommend without first identifying a specific risk factor or symptom.

The current and proposed update to HIV screening is reflected in the chart below:

TOPIC	ADOLESCENCE										
PROCEDURES	11 Y	12 Y	13 Y	14 Y	15 Y	16 Y	17 Y	18 Y	19 Y	20 Y	21 Y
HIV (Current) [30]	★	★	★	★	←	—	•	→	★	★	★
HIV (Proposed) [30]	★	★	★	★	•	→	→	→	→	→	→

All such screenings (universal and risk-based) within this age range are within the scope of the guideline. The proposed update also includes an accompanying footnote to provide updated information from the AAP about more frequent screening for youth assessed as at high risk of HIV infection. The full footnote reads:

''Screen adolescents for HIV at least once between the ages of 15 and 21 making every effort to preserve confidentiality of the adolescent, as per ''Human Immunodeficiency Virus (HIV) Infection: Screening'' (*https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/human-immunodeficiency-virus-hiv-infection-screening*), and after initial screening, youth at increased risk of HIV infection should be retested annually or more frequently, as per ''Adolescents and Young Adults: The Pediatrician's Role in HIV Testing and Pre- and Postexposure HIV Prophylaxis'' (*https://doi.org/10.1542/peds.2021-055207*).''

Authority: 2713(a)(3) of the Public Health Service Act, 42 U.S.C. 300gg–13(a)(3).

Carole Johnson,

Administrator.

[FR Doc. 2022–23845 Filed 11–1–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant and Maternal Mortality (Formerly the Advisory Committee on Infant Mortality)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Infant and Maternal Mortality (ACIMM or Committee) has scheduled a public meeting. Information about ACIMM and the agenda for this meeting can be found on the ACIMM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

DATES: December 7, 2022, from 11 a.m. to 6 p.m. Eastern Time.

ADDRESSES: This meeting will be held via webinar. *The webinar link and log-in information will be available at the ACIMM website before the meeting: https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Officer, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18N84, Rockville, Maryland 20857; 301–443–0543; or *SACIM@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACIMM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92–463, as amended, (5 U.S.C. App. 2), which sets

forth standards for the formation and use of Advisory Committees.

The ACIMM advises the Secretary of Health and Human Services (Secretary) on department activities, partnerships, policies, and programs directed at reducing infant mortality, maternal mortality and severe maternal morbidity, and improving the health status of infants and women before, during, and after pregnancy. The Committee provides advice on how to coordinate federal, state, local, tribal, and territorial governmental efforts designed to improve infant mortality, related adverse birth outcomes, maternal health, as well as influence similar efforts in the private and voluntary sectors. The Committee provides guidance and recommendations on the policies, programs, and resources required to address the disparities and inequities in infant mortality, related adverse birth outcomes and maternal health outcomes, including maternal mortality and severe maternal morbidity. With its focus on underlying causes of the disparities and inequities seen in birth outcomes for women and infants, the Committee advises the Secretary on the health, social, economic, and environmental factors contributing to the inequities and proposes structural, policy, and/or systems level changes.

The agenda for the December 7, 2022, meeting is being finalized and may include the following topics: a review of draft recommendations for the Secretary on improving birth outcomes among American Indian and Alaska Native mothers and infants and a vote on whether to send them forward; discussion to determine new and continuing priority areas for the Committee; and Committee operations. Agenda items are subject to change as priorities dictate. Refer to the ACIMM website listed above for any updated information concerning the meeting.

Members of the public will have the opportunity to provide written or oral comments. Requests to submit a written statement or make oral comments to ACIMM should be sent to Vanessa Lee, using the email address above at least 3 business days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting by emailing *SACIM@hrsa.gov.* Oral comments will be honored in the order they are requested and may be limited as time allows.

Individuals who plan to attend and need special assistance or a reasonable accommodation should notify Vanessa Lee at the contact information listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–23790 Filed 11–1–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0008]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before January 3, 2023.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0008–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Abstract: The Office for Civil Rights is seeking a revision on an approval for a 3-year clearance on a previous collection. Individuals may file written or electronic complaints with the Office for Civil Rights when they believe they have been discriminated against by programs or entities that receive Federal financial assistance from the Health and Human Service or if they believe that their right to the privacy of protected health information freedom has been violated. Annual Number of Respondents frequency of submission is record keeping and reporting on occasion.

Title of the Collection: Assurance of Compliance, Form HHS–690.

Type of Collection: Revision.

OMB No. 0945–0008.

Abstract: This Information Collection Request is to continue the previously approved collection 0945–0008 that is expiring in December 2022, titled: Assurance of Compliance, Form HHS–690, subject to minor modifications. Such an assurance is required by the federal civil rights laws enforced by the Office for Civil Rights, as described herein. One method that the federal government uses to ensure civil rights compliance is to require covered entities to submit written assurances of compliance when applying for federal financial assistance. The assurances alert covered entities of their civil rights obligations and provide the Department with a valuable enforcement tool, as a recipient's written assurance and certification documents can provide an independent contractual basis for enforcement of nondiscrimination requirements.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondents	Average burden/ response (in hours)	Total burden hours
States, certain health care providers, other persons and entities.	Form HHS–690	9595	1	4	38,380
Total					38,380

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–23797 Filed 11–1–22; 8:45 am]

BILLING CODE 4153–01–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; Alzheimer's disease and its related dementias.

Date: December 1, 2022.

Time: 10:00 a.m. to 6:00 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: Mariam Zaka, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892, (301) 435–1042, *zakam2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Basic Tumor Immunology.

Date: December 1, 2022.

Time: 10:00 a.m. to 6:00 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: Jingwu Xie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8625, *jingwu.xie@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Endocrinology and Metabolism.

Date: December 1, 2022.

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: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory System.

Date: December 1, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, *ohmm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular Biology and Hematology.

Date: December 1, 2022,

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, Bethesda, MD 20892, (301) 408–9497, *zouai@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: October 27, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23819 Filed 11–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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; Support for Research Excellence (SuRE) Award (R16 Clinical Trial Not Allowed) and Support for Research Excellence—First Independent Research (SuRE-First) Award (R16 Clinical Trial Not Allowed)

Date: November 29–30, 2022.

Time: 10:00 a.m. to 5:00 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 3G76, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy & Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G76, Bethesda, MD 20892 (240) 627–3255, *marci.scidmore@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: October 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23817 Filed 11–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCR.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCR.

Date: November 29–30, 2022.

Time: November 29, 2022, 10:00 a.m. to 5:20 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Time: November 30, 2022, 10:00 a.m. to 4:50 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lynn M. King, Ph.D. Director, Division of Extramural Activities, National Institute of Dental & Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892, (301) 594–5006, *lynn.king@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 27, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23818 Filed 11–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 28, 2022.

Time: 1:00 p.m. to 4:00 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 3G42, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, 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 3G42, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 30, 2022.

Time: 1:00 p.m. to 4:00 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 3G42, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, 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 3G42, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: December 1, 2022.

Time: 1:30 p.m. to 4:30 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 3G42, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, 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 3G42, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@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: October 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23820 Filed 11–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 29, 2022.

Time: 10:00 a.m. to 4:30 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 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Rohani, 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 3G56, Rockville, MD 20852, (301) 761–6656, *maryam.rohani@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: October 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23821 Filed 11–1–22; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Exemption From Historic Preservation Review for Electric Vehicle Supply Equipment

AGENCY: Advisory Council on Historic Preservation.

ACTION: Approval of exemption regarding electric vehicle supply equipment.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has approved an exemption that would relieve federal agencies from the historic preservation review requirements under the National Historic Preservation Act regarding the effects of the installation of certain electric vehicle supply equipment (EVSE) on historic properties.

DATES: The exemption goes into effect on October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Jaime Loichinger, (202) 517–0219, *jloichinger@achp.gov*.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (section 106 and NHPA), requires federal agencies to consider the effects of projects they carry out, license/permit/approve, or assist (undertakings) on historic properties, and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. Historic properties are those properties that are listed in the National Register of Historic Places (National Register) or eligible for such listing.

The NHPA authorizes the ACHP to promulgate regulations for exempting undertakings from any or all of the requirements of section 106. 54 U.S.C. 304108(c). The section 106 regulations, found at 36 CFR part 800, detail the process for the approval of such exemptions at 36 CFR 800.14(c).

In accordance with section 800.14(c), the ACHP may approve an exemption for an undertaking if it finds that: (i) the actions within the program or category would otherwise qualify as ''undertakings'' as defined in 36 CFR 800.16; (ii) the potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and (iii) exemption of the program or category is consistent with the purposes of the NHPA.

I. Background

In 2021, two Executive Orders (E.O.) were issued to accelerate investment in sustainable procurement strategies, focused on clean energy and infrastructure: (1) E.O. 14008, Tackling the Climate Crisis at Home and Abroad, prioritizes the development of a Federal Clean Electricity and Vehicle Procurement Strategy and directs Federal agencies to upgrade the entire federal fleet to clean and zero-emission vehicles (ZEV); and (2) E.O. 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, sets a goal of 100 percent ZEV federal acquisitions by 2035, including 100 percent light duty vehicle federal acquisitions by 2027.

Additionally, the Infrastructure Investment and Jobs Act (IIJA) of 2021 (Pub. L. 117–58) appropriates $550 billion for new infrastructure investments related to electric vehicles (EV), which are ZEVs. The IIJA includes provisions to increase investment in electric vehicle supply equipment (EVSE), alternative fuel infrastructure, EV batteries, electricity grid upgrades, and light-, medium-, and heavy-duty ZEVs and vessels. Several federal grant programs were established or received additional funding through the IIJA. The National Electric Vehicle Infrastructure (NEVI) program provides formula funding to states to install EVSE, while the Charging and Fueling Infrastructure Grant Program will provide grants on a competitive basis, with priority given to projects that expand access to EVSE within rural areas and low- and moderate-income neighborhoods. In total, the IIJA provides up to $7.5 billion to build out a national network of EV chargers in the United States, including on Tribal lands. Due to these requirements and investments, federal agencies are anticipated to propose activities to carry out, license, approve, or fund undertakings to electrify federal vehicles and provide EVSE that have the potential to affect historic properties and therefore, require section 106 review.

An EV produces zero tailpipe emissions when running only on electricity, dramatically lowering smog and greenhouse gas emissions even when considering electricity generation (EV refers to both Battery Electric Vehicles and Plug-in Hybrid Electric Vehicles). In order to charge EVs, installation of EVSE is required. EVs have the potential to significantly improve federal fleet efficiency by reducing vehicle operation and maintenance costs. EVs require EVSE. Commonly referred to as charging stations, EVSE is the hardware that supplies electricity to charge an EV. There are three levels of EVSE that are defined by their charging capacities; EVSE can be wall- or pole-mounted, co-located or stand alone, and vary in design, size, charging speed and energy use.

II. Exemption Concept and Criteria

In considering how to address the anticipated increase in undertakings as a result of these requirements and investments, the Department of Homeland Security (DHS) assembled an ad hoc working group of Federal Preservation Officers (FPOs) to discuss EV priorities and the potential effects of expanded EVSE infrastructure programs on historic properties. Through consultation with fleet technical experts, the working group defined the undertakings to be addressed by the proposed exemption as the installation, maintenance, repair, and expansion of Levels 1, 2, and 3 EVSE as defined by the General Services Administration (GSA). After being approached by DHS with the concept of a program alternative, the ACHP determined it would propose the exempted category itself. The government-wide priority for fleet electrification and EVSE installation merited ACHP coordination of the proposal to ensure broad and appropriate consultation for an exemption likely to be applied across multiple federal agency programs.

The exemption can be used by ''federal agencies.'' It is also available to be used by a state, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with a federal statute. Consistent with 36 CFR 800.14(c)(1), section 106 exemptions must meet the criteria mentioned earlier. The ACHP has determined that the proposed exemption, which appears below, meets these criteria. The exemption aligns with the requirements of the NHPA because it reflects an effort to harmonize modernization and climate change reduction measures with the continued protection and enjoyment of historic properties. As described above and in the exemption text, the EVSE will be restricted to existing footprints and levels of previous ground disturbance, and would use reversible, non-permanent techniques for installation, where appropriate. As such, the effects of the proposed undertakings are foreseeable and likely to be minimal or not adverse.

III. Public Participation and Consultation

In accordance with 36 CFR 800.14(c)(2), public participation regarding exemptions must be arranged on a level appropriate to the subject and scope of the exemption. In order to meet this requirement, an earlier draft was published for public comment in the **Federal Register** on May 5, 2022 (87 FR 26771–26773). The ACHP worked closely with multiple federal agencies to ensure the exemption has the correct technical language, and also consulted

with State Historic Preservation Officers, Tribal leaders, Tribal Historic Preservation Officers, and other consulting parties, including the National Trust for Historic Preservation and the National Alliance of Preservation Commissions.

Seven consultation meetings were held between June and August 2022, and had participants from 31 states, 21 Tribes, and 3 organizations. Comments and questions were submitted during consultation meetings, as well as via email during comment periods that followed the consultation meetings. Most comments were supportive of the effort, although two organizations opposed the exemption in its entirety.

Comments reflected a range of areas, including: the scope of the exemption; the need for additional details, definitions and conditions to ensure effects to historic properties are not adverse; the use of professionals qualified within historic preservation field by agencies to meet the exemption's conditions; the potential cumulative effects to historic properties or post-review discoveries; and the potential for effects to properties of religious and cultural significance to Indian Tribes and Native Hawaiian organizations.

In response to these comments, the ACHP revised the exemption to more clearly define the range of actions that can occur using the exemption and added additional detail to the conditions under which an undertaking may fall within the scope of this exemption. Additional definitions, including changes to ''parking facilities'', were included in the version approved by the ACHP. Regarding the use of qualified professionals, the ACHP determined that such a requirement is not necessary because even if historic properties are present, they would not be affected due to the exemption's conditions. While the requirement was not included within the exemption, the conditions were further refined to ensure that non-historic preservation professionals could reasonably apply the exemption's terms.

The ACHP received comments regarding the potential for the installation of EVSE, particularly when several EVSE might be installed within one location, to result in cumulative effects to historic properties, or for there to be discoveries of historic properties during project implementation. As written, because the exemption requires the use of existing electrical infrastructure, the amount of new EVSE that could be constructed or implemented at a given location is necessarily limited to the current electrical capacity. Therefore, it is unlikely to result in cumulative adverse effects on historic properties. Further, any addition beyond the existing electrical capacity would fall outside the exemption and require section 106 review. Other comments requested that there be a survey requirement. Because the exemption relies upon existing infrastructure and parking structures, any ground disturbance necessary to install the equipment will be limited to areas already disturbed, meaning that a survey would not likely result in the identification of historic properties that have sufficient integrity to contribute to or be individually considered eligible for listing in the National Register of Historic Places. Similarly, because the exemption limits the level of ground disturbance to previously disturbed sediments, it is unlikely that discoveries of intact historic properties that retained integrity would occur. Moreover, the requirements of the Native American Graves Protection and Repatriation Act and other federal, state and local laws (besides section 106) are unaffected by the exemption. No additional edits were made to the exemption as a result of these comments.

Comments were received regarding potential effects from EVSE to historic properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations (NHOs), and how agencies would determine whether the installation of EVSE in a location may affect such properties without consultation with the affected Indian Tribe or NHO. While it is possible that some EVSE locations may be placed on or near such properties, because the exemption requires that ground disturbance be limited to the depth of previous construction and that the EVSE be minimally visible, the ACHP believes the exemption will reasonably ensure that any effects from the proposed EVSE undertakings to historic properties will be minimal or not adverse. When planning EVSE projects, agencies are encouraged to discuss the projects with stakeholders, including Indian Tribes and NHOs, to ensure that application of the exemption is appropriate. This recommendation is further strengthened by the addition of a new stipulation within the exemption, ''Recommendation Outside Tribal Lands.''

Two objections were made to the exemption, on the basis that the proposal ran contrary to the purposes of the NHPA. However, one of the explicit policies of the NHPA is for the federal government to ''use measures . . . to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.'' 54 U.S.C. 300101(1). Climate change presents various challenges to historic properties and to many social, economic and other needs that must be addressed. Given that this exemption supports expansion of the use of EVs across the country, a climate change reduction method, it clearly meets the purposes of the NHPA. The ACHP acknowledges the objections and will continue to oversee the exemption's use.

Finally, to ensure appropriate administrative oversight of the exemption, the ACHP added an amendment provision to the exemption. While there were requests to also include a reporting stipulation, such reporting was determined by the ACHP to be unnecessary due to the minimal or non-adverse effects to historic properties. Further, such information would be challenging to require and obtain from the myriad agencies that will be using this exemption. However, the ACHP has committed to routinely querying agencies regarding the use of the exemption and will share that information with consulting parties when appropriate.

On October 26, 2022, the ACHP membership approved the exemption reproduced below.

IV. Text of Exemption

The full text of the approved exemption is reproduced below:

Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment

I. Exemption From Section 106 Requirements

Except as noted in Section II, all federal agencies are exempt from the Section 106 requirements of taking into account the effects of the installation, maintenance, repair, or expansion of EVSE and Level 1, 2, or 3 charging stations, provided these:

(1) take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an existing electrical service panel as practicable;

(2) use reversible, minimally invasive, non-permanent techniques to affix the infrastructure;

(3) minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance;

(4) use the lowest profile EVSE reasonably available that provides the necessary charging capacity;

(5) place the EVSE in a minimally visibly intrusive area; and

(6) use colors complementary to surrounding environment, where possible.

Each federal agency remains responsible for considering the effects of components of its undertakings not subject to this exemption on historic properties, in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative pursuant to 36 CFR 800.14.

II. Application on Tribal Lands

This exemption shall not apply on Tribal Lands, or to activities that may affect historic properties located on Tribal Lands, unless the Tribal Historic Preservation Officer, Tribe, or a designated representative of the Tribe has provided prior written notification to the Advisory Council on Historic Preservation (ACHP) that it agrees with the use of the exemption on its lands. Indian Tribes can agree to such use of the exemption by completing the attached form (Attachment A) and submitting the completed form to the ACHP. The exemption would then be applicable on those Tribal Lands when the ACHP provides notice on its website of such agreement.

III. Recommendation Outside Tribal Lands

While the ACHP does not expect that activities carried out consistent with this exemption will affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations (NHOs), the ACHP notes that such historic properties have not been consistently identified during prior documentation efforts. The ACHP advises that, where the installation of EVSE may occur in a location on or near an existing archaeological site, feature, or district, or any other property with known potential significance to Indian Tribes or NHOs, the agency should coordinate with interested Indian Tribes or NHOs to determine whether they ascribe significance to the site or property. Should a Tribe or Native Hawaiian organization ascribe significance to the site area, the agency should undertake a Section 106 review in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative pursuant to 36 CFR 800.14.

IV. Existing Agreements and State and Local Reviews

This exemption does not amend, invalidate, or otherwise modify Section 106 agreements in existence at the time this exemption goes into effect. This exemption does not modify, preempt, or replace any applicable state or local laws or regulations.

V. Termination

The ACHP may terminate this exemption in accordance with 36 CFR 800.14(c)(7) if it determines that the purposes of Section 106 are not adequately met.

VI. Amendments

This exemption may be amended by the ACHP membership. Such amendments must be consistent with the criteria at 36 CFR 800.14(c)(1) and preceded by consultation appropriate to the scope of the amendments.

VII. Definitions

The following definitions shall apply to this exemption:

a. ''Agency'' means an agency as defined by 5 U.S.C. 551, and includes state, local, or tribal government officials who have been delegated legal responsibility for compliance with Section 106 in accordance with federal law.

b. ''Electric Vehicle Supply Equipment'' (EVSE) means conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of delivering energy from the premises wiring to the EV. There are three levels of EVSE:

i. Level 1—Refers to a freestanding or wall mounted charging structure that delivers a 110/120V charge, replenishing an EV battery at a rate of 4 to 6 miles of range per hour of charging time. Charging an EV at level 1 typically takes between 7 and 20 hours depending on the size of the vehicle's battery.

ii. Level 2—Refers to a freestanding or wall mounted charging structure that delivers a 208/240V charge, replenishing an EV battery at a rate of 10 to 20 miles of range per hour of charging time. Charging an EV at level 2 typically takes between 2 and 5 hours depending on the size of the vehicle's battery.

iii. Level 3 (also known as Direct Current (DC) Fast Charging) -Refers to a freestanding or wall mounted structure capable of being networked that is designed to charge vehicles more quickly than level I or level II with an electrical output ranging between 40 kW—500 kW delivering 50—1000 volts of direct current to the EV battery. Converts AC power to DC within the charging station and delivers DC power directly to the battery. DC fast charging can typically replenish an EV battery at a rate of 50 to 200 miles of range per 30 minutes of charging time.

c. ''Lowest profile equipment'' means EVSE that is the smallest height and width possible that meets the EV charging needs.

d. ''Minimally visibly intrusive'' means that the EVSE is partially visible but does not detract from the views from or to historic properties.

e. ''Parking facility'' means any building, structure, land, right-of-way, facility or area used for parking of motor vehicles.

f. ''Tribal lands'' means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Attachment A to the Exemption From Historic Preservation Review for Electric Vehicle Supply Equipment

The (INSERT NAME OF INDIAN TRIBE) authorizes federal agencies to utilize the attached Exemption from Historic Preservation Review for Electric Vehicle Supply Equipment on the Tribal Lands of the (INSERT NAME OF INDIAN TRIBE).
Signed by: (Signature)
(Printed Name and Title)
(DATE)

The (INSERT NAME OF INDIAN TRIBE) may discontinue this authorization at any time by providing written notice to the Advisory Council on Historic Preservation.
For further information, please contact:
(Tribal Contact; Name and Contact Information)
(END OF DOCUMENT)

Authority: 36 CFR 800.14(c).

Dated: October 28, 2022.

Javier Marques,

General Counsel.

[FR Doc. 2022–23854 Filed 11–1–22; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0348]

Cooperative Research and Development Agreement—Artificial Intelligence (AI) Detection With Coast Guard Optical Sensors

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a cooperative research and development agreement (CRADA) with companies to evaluate autonomous detection and tracking systems to determine its potential use in Search and Rescue planning. The Coast Guard will provide video output from various sensors to detect and characterize targets for search along with collaboratively developing methods to evaluate the effectiveness of the autonomous detection and tracking systems to allow for the integration with accepted search planning systems and methodologies. From a recent demonstration, the Coast Guard is currently considering partnering with Zelim to investigate their artificial intelligence-based casualty detection system, SARBox, and solicits public comment on the possible participation of other parties in the proposed CRADA, and the nature of that participation. The Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

DATES: Comments must reach the Coast Guard on or before December 2, 2022. Synopses of proposals regarding future CRADAs must also reach the Coast Guard on or before December 2, 2022.

ADDRESSES: Submit comments online at *http://www.regulations.gov* following website instructions. Submit synopses of proposals regarding future CRADAs to Ms. Shelly Wyman at her address listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact Ms. Shelly Wyman, Project Official, Aviation Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2600, email *RDC-info@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to publish responses to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2022–0348 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.* We do accept anonymous comments.

We encourage you to submit comments through the Federal Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

Do not submit detailed proposals for future CRADAs to *http://www.regulations.gov.* Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the Coast Guard's Research and Development Center (R&DC) will collaborate with one or more non-Federal participants. Together, the R&DC and the non-Federal participants will evaluate autonomous detection and tracking systems to determine their potential for search and rescue planning that may greatly increase mission performance on select USCG platforms and improve Maritime Domain Awareness(MDA) capability.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) In conjunction with the non-Federal participant(s), develop the demonstration test plan to be executed under the CRADA;

(2) Provide video output from various Coast Guard sensors to test and integrate with non-Federal participant(s) autonomous detection systems;

(3) Provide access to and coordinate the use of necessary Coast Guard facilities, surface assets, and R&D Center equipment to facilitate assessments. Responsible for ensuring that all necessary approvals have been obtained before the execution of the test plan;

(4) Provide discussions on sound search planning theory to help identify ways of collecting quantitative measures to better define the effectiveness of AI technology compared to current SAR efficiency calculations;

(5) Collaboratively collect and analyze demonstration test plan data; and

(6) Collaboratively develop a summary documenting the methodologies, findings, conclusions, and recommendations of this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide the autonomous detection and tracking system and all other equipment to conduct the demonstration described in the demonstration test plan;

(2) Provide engineering support, including all required operators and technicians to conduct the demonstration;

(3) Provide shipment and delivery of all autonomous detection and tracking system equipment required for the demonstration; and

(4) Provide travel and associated personnel and other expenses as required.

(5) Assist with compiling the results of the demonstration(s) with R&D Center that documents the methodologies, findings, conclusions, and recommendations under this CRADA.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

(excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Zelim for participation in this CRADA, because they have a solution in place for providing an AI casualty detection system that can be used on multiple platforms using Coast Guard optical sensors. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology demonstration effort to evaluate and assess how AI detection can be utilized with Coast guard optical sensors. The goal of this CRADA is to identify and determine methods of checking effectiveness of AI systems compared to current accepted Search and Rescue standards and determine their potential use in a maritime environment by the first responder and the DHS operational components. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

This notice is issued under the authority of 5 U.S.C. 552(a) and 15 U.S.C. 3710(a).

Dated: October 27, 2022.

Daniel P. Keane,

Captain, USCG, Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2022–23811 Filed 11–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0031; OMB No. 1660–0080]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60 Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with changes, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the application process for the conveyance of Federal real property for public benefit.

DATES: Comments must be submitted on or before January 3, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0031. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Justin Dowdy, Realty Specialist, Federal Emergency Management Agency (FEMA) at 202–212–3631 or *justin.dowdy@fema.dhs.gov* .You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Excess Federal real property is defined as property that is no longer mission critical to the needs of the Federal Government. The conveyance and disposal of excess real property is governed by the Federal Property and Administrative Services Act of 1949 (Property Act) as amended, 40 U.S.C. 541, *et seq.,* 40 U.S.C. 553, and applicable regulations (41 CFR parts 102–75.750 through 102.75.815). Under the sponsorship of FEMA, the Property Act gives the Administrator of the General Services Administration (GSA) authority to convey Federal real and related surplus property (without monetary consideration) to units of state and local government for emergency management response purposes, including fire rescue services. The scope and philosophy of GSA's real property policies are contained in 41 CFR part 102–71.

The purpose of this application is to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as state, local, city, town, or other like government bodies as it relates to emergency management response purposes, including fire and rescue services. Compliance will ensure that properties will be fully positioned to use at their highest and best potential as required by GSA and Department of Defense regulations, Federal law, Executive Orders, and the Code of Federal Regulations.

Collection of Information

Title: Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use.

Type of Information Collection: Extension, with changes, of a currently approved information collection.

OMB Number: 1660–0080.

FEMA Forms: FEMA Form FF–119–FY–22–133 (formerly 119–0–1), Surplus Federal Real Property Application for Public Benefit Conveyance.

Abstract: Use of the Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use is necessary to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as state, local, county, city, town, or other like government bodies, as it relates to emergency management

response purposes, including fire and rescue services. Utilization of this application will ensure that properties will be fully positioned for use at their highest and best potential as required by General Services Administration and Department of Defense regulations, public law, Executive Orders, and the Code of Federal Regulations.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Estimated Total Annual Burden Hours: 68.

Estimated Total Annual Respondent Cost: $5,291.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $3,178.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–23816 Filed 11–1–22; 8:45 am]

BILLING CODE 9111–19–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: November 15, 2022, ET. 1 p.m.–2:30 p.m.

PLACE: Phoenix Park Hotel, 520 N Capitol St. NW, Washington, DC 20001, and Via Zoom.

STATUS: Meeting of the Board of Directors and Advisory Council, open to the public.

MATTERS TO BE CONSIDERED:

- Call to Order
- Overview of Meeting Rules by Acting General Counsel
- President/CEO update
- Management Team Updates
- FY23 Priorities
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Nicole Stinson, Associate General Counsel, (202) 683–7117.

For Dial-in Information Contact: Nicole Stinson, Associate General Counsel, (202) 683–7117.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2022–23967 Filed 10–31–22; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–CIRO–33975; PS.SPWLA0122.00.1]

Minor Boundary Revision at City of Rocks National Reserve

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that the boundary of City of Rocks National Reserve (Reserve) is modified to include Tract No. 101–13 containing 100 acres of fee land, Tract No. 101–14 containing 4.63 acres of a road access easement, and Tract 101–15 containing 0.45 acres of an access easement for providing vehicular access to staff and visitors to the northeastern area of the park. The inclusion and acquisition of this property will enable the National Park Service (NPS) to provide recreational access to park visitors at the northeastern boundary of the Reserve. The fee lands and road easements will also allow NPS to better manage the lands and preserve the unique rock formation in this area of the Reserve.

DATES: The effective date of this boundary revision is November 2, 2022.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Interior Regions 8, 9, 10, and 12, Land Resources Program Center, 168 South Jackson Street, Seattle, WA 98104.

FOR FURTHER INFORMATION CONTACT: Chief Realty Officer Truda Stella, National Park Service, Interior Regions 8, 9, 10 & 12, Land Resources Program Center, 168 South Jackson Street, Seattle, WA 98104–2853 or *pwr_realty_officer@nps.gov.*

SUPPLEMENTARY INFORMATION: 54 U.S.C. 100506(c)(l)(B) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. This notice hereby provides that the boundary of City of Rocks National Reserve is revised, effective as of the date of this notice, to include approximately 105.08 acres of land of privately owned land within City of Rocks National Reserve, Cassia County, Idaho. The boundary revision is depicted on Map No. 003/177112, dated May 2022.

Frank Lands,

Regional Director, Interior Regions 8, 9, 10, and 12.

[FR Doc. 2022–23835 Filed 11–1–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1191 (Modification Proceeding)]

Certain Audio Players and Controllers, Components Thereof, and Products Containing the Same; Notice of Commission Determination Not To Review an Initial Determination Terminating the Modification Proceeding Based on Withdrawal of the Petition; Termination of Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 70) of the presiding administrative law judge (''ALJ'') granting respondent Google LLC's (''Google'') unopposed motion to terminate the modification proceeding based on withdrawal of its petition for modification. The modification proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International

Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 11, 2020, the Commission instituted this investigation based on a complaint filed by Sonos, Inc. (''Sonos'') of Santa Barbara, California. 85 FR 7783 (Feb. 11, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337''), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audio players and controllers, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,195,258; 10,209,953; 8,588,949; 9,219,959; and 10,439,896. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Google and Alphabet Inc. (''Alphabet''), both of Mountain View, California. *Id.* The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

On January 6, 2022, the Commission issued its final determination based on the record of the investigation (1) affirming with modified reasoning the ID's findings of violation of section 337 with respect to the asserted patents, (2) determining that the appropriate remedy is a LEO and CDO against Google, (3) finding that the public interest does not preclude this remedy, and (4) setting bond during the period of Presidential review at 100 percent of the entered value of the subject articles. *See* 87 FR 1784–85 (Jan. 12, 2022).

On July 14, 2022, Google filed a petition for a modification of the LEO and CDO pursuant to Commission Rule 210.76(a)(1) (19 CFR 210.76(a)(1)). On August 12, 2022, the Commission instituted a modification proceeding based on Google's petition. 87 FR 49885–86 (Aug. 12, 2022).

On October 11, 2022, Google filed an unopposed motion to withdraw its petition and terminate the modification proceeding without prejudice. On October 14, 2022, OUII filed a response in support of the motion. Sonos did not file a response to the motion.

On October 17, 2022, the ALJ issued the subject ID granting the motion. The ID finds that the motion complies with the requirements of Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)) and that ''no extraordinary circumstances exist that would prevent the requested termination of the modification proceeding.'' ID at 2–3. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID. The modification proceeding is hereby terminated.

The Commission vote for this determination took place on October 27, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 27, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23799 Filed 11–1–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1332]

Certain Semiconductors and Devices and Products Containing the Same, Including Printed Circuit Boards, Automotive Parts, and Automobiles; Corrected Notice of Institution; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 23, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Daedalus Prime LLC of Bronxville, New York. A supplement to the complaint was filed on September 12, 2022. The complaint alleges violations of 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 semiconductors and devices and products containing the same, including printed circuit boards, automotive parts, and automobiles by reason of the infringement of certain claims of U.S. Patent No. 8,775,833 (''the '833 patent''); U.S. Patent No. 8,898,494 (''the '494 patent''); U.S. Patent No. 9,575,895 (''the '895 patent''); U.S. Patent No. 10,049,080 (''the '080 patent''); U.S. Patent No. 10,394,300 (''the '300 patent''); and U.S. Patent No. 10,705,588 (''the '588 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 27, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–18 of the '833 patent; claims 1–18 of the '494 patent; claims 1–17 of the '895 patent; claims 1–24 of the '080 patent;

claims 1–19 of the '300 patent; and claims 1–20 of the '588 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''semiconductor chips and printed circuit boards for use in automobile infotainment systems and instrument clusters, and automobile infotainment systems, instrument clusters, and automobiles containing the same, and components thereof'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Daedalus Prime LLC, 51 Pondfield Road, Suite 3, Bronxville, NY 10708

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Avnet, Inc., 2211 South 47th Street, Phoenix, AZ 85034

Digi-Key Electronics, 701 Brooks Avenue South, Thief River Falls, MN 56701

Mercedes-Benz Group AG, 70546 Stuttgart, Germany

Mercedes-Benz AG, Epplestraße 225, 70567 Stuttgart-Möhringen, Germany

Mercedes-Benz USA, LLC, 1 Mercedes-Benz Drive, Sandy Springs, GA 30328

Mouser Electronics, Inc., 1000 North Main Street, Mansfield, TX 76063

Newark, 300 S. Riverside Plaza, Suite 2200, Chicago, IL 60606

NXP Semiconductors N.V., High Tech Campus 60, 5656 AG Eindhoven, Netherlands

NXP USA, Inc., 6501 W. William Cannon Dr., Austin, TX 78735

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 27, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23798 Filed 11–1–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Comment Period Extension on Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act Regarding Claims in Connection With the Findett/Hayford Bridge Road Groundwater Superfund Site

On September 28, 2022 the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Missouri in the lawsuit entitled *United States and the State of Missouri* v. *Union Electric Company d/b/a Ameren Missouri.,* Civil Action No. 22–cv–1038. On October 4, 2022, notice of the proposed settlement agreement and the start of the comment period was published in the **Federal Register**. The United States is extending the comment period for this Proposed Consent Decree by thirty (30) days, to December 5, 2022.

The proposed Consent Decree would resolve claims the United States and State of Missouri have brought pursuant to sections 106, 107(a), and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607(a), and 9613(g), as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), and section 260.530 of the Missouri Hazardous Waste Management Law, Mo. Rev. Stat. 260.530, regarding the Findett/Hayford Bridge Road Groundwater Superfund Site Operable Unit 4 (''OU4'').

Under the Settlement Agreement, Union Electric Company d/b/a Ameren (''Ameren'') will perform response actions at the Site pursuant to the June 30, 2021 Record of Decision, and pay U.S. Environmental Protection Agency and Missouri Department of Natural Resources oversight costs. In exchange, the United States and the State will provide covenants not to sue or to take administrative action against Ameren pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Mo. Rev. Stat. 260.510 and 260.530, with regard to the Work performed.

EPA is planning to hold a public availability session to provide the public with information regarding response actions at OU4. Information on the time, location, and details regarding the meeting will be posted here: *https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0700845.*

Any comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Missouri* v. *Union Electric Company d/b/a Ameren Missouri,* 22–cv–1038, D.J. Ref. No. 90–11–2–417/6. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

Alternatively, a paper copy of the Settlement Agreement will be provided upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $34.75 for the Consent Decree and appendices, and $8 for only the Consent Decree without appendices (25 cents per page reproduction cost) payable to the United States Treasury.

Susan Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–23780 Filed 11–1–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0001]

Advisory Committee on Construction Safety and Health (ACCSH): Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the ACCSH Charter.

SUMMARY: The Secretary of Labor (Secretary) has renewed the charter for the Advisory Committee on Construction Safety and Health (ACCSH).

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH: Mr. Damon Bonneau, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2183; email: *bonneau.damon@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary has renewed the ACCSH charter. The new charter will expire two years from the filing date.

Congress established ACCSH in Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3704(d)(4)), to advise the Secretary in the formulation of construction safety and health standards as well as on policy matters arising under the CSA and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and its implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (8/31/2020). Pursuant to FACA (5 U.S.C. App. 2, 14(b)(2)), the ACCSH charter must be renewed every two years.

The new charter was revised to restore a description of demographic categories targeted for participation on ACCSH that was removed in a prior charter renewal cycle.

The new ACCSH charter is available to read or download at *http://www.regulations.gov* (Docket No. OSHA–2022–0001), the federal rulemaking portal. The charter also is available on the ACCSH page on OSHA's web page at *http://www.osha.gov/advisorycommittee/accsh/charter,* and at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions. In addition, the charter is available for viewing or download at the Federal Advisory Committee Database at *http://www.facadatabase.gov.*

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 655, 40 U.S.C. 3704, Secretary of Labor's Order No. 8–2020 (85 FR 58393), 5 U.S.C. App. 2, and 29 CFR part 1912.

Signed at Washington, DC, on October 27, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–23801 Filed 11–1–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Request for Intervention

ACTION: Notice.

AGENCY: Division of Federal Employees', Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Labor.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Request for Intervention '' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 3, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure 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 can be properly assessed.

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

The Longshore and Harbor Workers' Compensation Act (LHWCA), at 39(a) generally authorizes the Secretary of Labor to prescribe rules and regulations to implement the Act. *See* 33 U.S.C. 939(a).

Attorney Fee Approval Request (LS–4)

When an attorney successfully obtains benefits for the injured worker or

survivor, he or she may be entitled to a fee. *See* 33 U.S.C. 928; 20 CFR 702.132. In certain circumstances, the Act shifts payment of the attorney's fee to the employer (or its insurance carrier). 20 CFR 702.134. The appropriate adjudicator—an OWCP District Director, an Administrative Law Judge, the Benefits Review Board or a court—must approve the fee. The District Director rules on attorney fees for services rendered while the case is pending before him or her. 20 CFR 702.132. *See* 20 CFR 702.134.

The attorney requesting the District Director's approval must file an itemized fee petition for services performed at the OWCP level. To identify and timely respond to the requests, OWCP is requiring attorneys to submit Form LS–4, Attorney Fee Approval Request. Using this form will speed the processing of attorney fee requests and the payment of such fees.

Application for Special Fund Relief (LS–5)

Under section 8(f) of the Act, 33 U.S.C. 908(f), if a pre-existing disability contributes to a disability or impairment from a subsequent work-related injury, the employer is liable for only the first 104 weeks of permanent disability compensation and the Longshore Special Fund (*see generally* 33 U.S.C. 944) is liable thereafter. *See also* 20 CFR 702.321. Hearing loss claims are different in that the Special Fund pays for the pre-existing hearing loss and the employer for the added hearing loss. An employer/carrier must submit a request for section 8(f) relief from compensation payments to OWCP; relief may be granted by an OWCP District Director or an Administrative Law Judge.

To identify and timely respond to requests under section 8(f), OWCP is requiring employers/carriers to submit Form LS–5, Application for Special Fund Relief. Form LS–5 reflects the application requirements codified at 20 CFR 702.321.

Commutation Application (LS–6)

When compensation under the LHWCA or the Defense Base Act (DBA), an extension of the LHWCA, is payable to certain aliens who are not residents (or about to become nonresidents) of the United States or Canada, the OWCP Director may commute future periodic payments and require payment equal to one-half of the commuted amount. *See* 33 U.S.C. 909(g); 42 U.S.C. 1652; 20 CFR 702.142; 20 CFR 704.102. The Director may commute compensation payments at his or her option, and must commute them upon the application of the employer or insurance carrier.

In response to its LHWCA and DBA stakeholders and to facilitate the commutation of payments to injured workers and the beneficiaries of deceased workers, OWCP is requiring employers and carriers to file Form LS–6 to request commutation.

Request for Intervention (LS–7)

Title 20 CFR 702.311 empowers the District Directors to resolve disputes with respect to claims in a manner designed to protect the rights of the parties and to resolve such disputes at the earliest practicable date. *See* 33 U.S.C. 923(a); 20 CFR 702.301 (''the district directors are empowered to amicably and promptly resolve such problems by informal procedures''). In some cases, the best resolution method is an informal conference. *See* 20 CFR 702.312–702.316 (establishing guidelines for conducting informal conferences).

Usually one of the parties requests an intervention or informal conference to assist with dispute resolution. Prior to scheduling an informal conference, the issues in dispute must be established and the District Director, or designee, must determine whether the type of intervention requested is the most effective means for resolving the disputed issues. The Form LS–7, Request for Intervention, will be used for that purpose.

Settlement Application Section 8(i) (LS–8)

LHWCA section 8(i), 33 U.S.C. 908(i), allows the parties to settle claims for compensation and/or medical benefits. A Settlement Application is time-sensitive because once the parties submit a settlement application, the District Director or Administrative Law Judge within thirty days must determine whether the settlement is adequate under the Act and regulations and, if so, issue a Compensation Order approving the settlement application in response.

To facilitate prompt processing of settlement applications, OWCP is requiring the parties to use Form LS–8 which outlines the terms of the settlement and provides the information required to determine the adequacy of the settlement proposal by the regulations. Title 20 CFR 702.242–702.243 authorizes this information collection.

Stipulation Approval Request (LS–9)

The regulations empower District Directors to resolve claims amicably and promptly, and issue formal compensation orders when the parties reach agreement on issues. *See* 20 CFR 702.301, 702.311, 702.315(a). To meet these goals, the District Director may issue an Order Approving Stipulations agreed to by all parties.

To facilitate prompt processing of requests to approve stipulations, OWCP is requiring the parties to use Form LS–9. The parties must attach the signed joint stipulations they wish to have approved. OWCP will prioritize handling of LS–9 forms.

This information collection is currently approved for use through March 31, 2023. Legal authority for this information collection is found at 33 U.S.C. 939(a). Regulatory authority is found at 20 CFR 702.132, 702.134, 702.321, 702.142, 704.102, 702.301, 702.312–702.316, 702.242–702.243, 702.301, 702.311 and 702.315(a).

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 under the PRA 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 Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0058.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL 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 submission of responses.

Agency: DOL-Office of Workers' Compensation Programs, DFELHWC.

Type of Review: Extension of currently approved collection.

Title of Collection: Request for Intervention, Longshore and Harbor Workers' Compensation Act.

Form: LS–4, Attorney Fee Approval Request, LS–5 Application for Special Fund Relief, LS–6 Commutation, LS–7 Request for Intervention, LS–8 Settlement Application Section, LS–9 Stipulation Approval Request by Registered or Certified Mail for Employers and/or Insurance Carriers, Attorney Fee Approval Request, Application for Special Fund Relief, Commutation Application, Request for Intervention, Settlement Application Section, and the Stipulation Approval Request by Registered or Certified Mail for Claimants and Authorized Representatives.

OMB Control Number: 1240–0058.

Affected Public: Private Sector, Individuals and Households.

Estimated Number of Respondents: 12,414.

Frequency: On occasion.

Total Estimated Annual Responses: 12,414.

Estimated Average Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 3189 hours.

Total Estimated Annual Other Cost Burden: $56,017.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2022–23802 Filed 11–1–22; 8:45 am]

BILLING CODE 4510–CF–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–27 and CP2023–26]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 3, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–27 and CP2023–26; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 74 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 26, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* November 3, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–23776 Filed 11–1–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–28 and CP2023–27; MC2023–29 and CP2023–28]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 4, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–28 and CP2023–27; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 75 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 27, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 4, 2022.

2. *Docket No(s).:* MC2023–29 and CP2023–28; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 76 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 27, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 4, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–23834 Filed 11–1–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* November 2, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 20, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 9 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–22 and CP2023–21.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23792 Filed 11–1–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Wednesday, November 9, 2022, at 9:00 a.m.; Thursday, November 10, 2022, at 8:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Wednesday, November 9, 2022, at 9:00 a.m.—Closed. Thursday, November 10, 2022, at 8:30 a.m.—Open.

MATTERS TO BE CONSIDERED:

Wednesday, November 9, 2022, at 9:00 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Compensation and Personnel Matters
4. Executive Session.
5. Administrative Items.

Thursday, November 10, 2022, at 8:30 a.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of the Minutes.
4. Committee Reports.
5. Financial Matters.
   a. FY2022 Annual Financial Report.
   b. FY2022 10K and Financial Statements.
   c. Annual Report to Congress.
   d. FY2023 Integrated Financial Plan and Liquidity Outlook.
   e. FY2024 Congressional Reimbursement Request.
6. Quarterly Service Performance Report.
7. Approval of Tentative Agenda for the February 9, 2023 Meeting.
8. Election of Chairman and Vice Chairman.

A public comment period will begin immediately following the adjournment of the open session on November 10, 2022. During the public comment period, which shall not exceed 45 minutes, members of the public may comment on any item or subject listed on the agenda for the open session. Registration of speakers at the public comment period is required. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at *https://www.surveymonkey.com/r/BOG-11-10-*

2022. No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Registration for the public comment period, either in person or via teleconference, will end on November 8 at noon ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2022–23895 Filed 10–31–22; 11:15 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 26, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 74 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–27, CP2023–26.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23851 Filed 11–1–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34741; File No. 812–15386]

Royalty Pharma plc and Royalty Pharma Finance Corporation

October 27, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit Royalty Pharma Finance Corporation (''FinCo'') to issue and sell commercial paper, preferred stock and other debt securities to finance the operations of Royalty Pharma plc (''RP'') and its subsidiaries. Applicants state that FinCo would qualify for the exemption provided by rule 3a–5 under the Act but for the facts that: (i) FinCo may finance various subsidiaries of RP that are not ''companies controlled by'' RP within the meaning of rule 3a–5 due to their reliance on sections 3(c)(5) or 3(c)(6) of the Act, (ii) FinCo is a direct subsidiary of Royalty Pharma Holdings Ltd., a wholly-owned subsidiary of RP, which would not be a ''company controlled by the parent company'' within the meaning of rule 3a–5 to the extent it relies on section 3(c)(6) of the Act, and (iii) FinCo's ''parent company'' for purposes of rule 3a–5 would be RP, which would not be a ''parent company'' within the meaning of rule 3a–5 to the extent it relies on section 3(c)(6) of the Act.

APPLICANTS: Royalty Pharma plc and Royalty Pharma Finance Corporation.

FILING DATE: The application was filed on September 20, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on November 21, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Gregory S. Rowland, *gregory.rowland@davispolk.com.*

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated September 20, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23788 Filed 11–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96164; File No. SR–MIAX–2022–39]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 1801, Definitions and Rule 1809, Terms of Index Options Contracts To Remove References to BRIXX Indexes

October 27, 2022.

Pursuant to the provisions of 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 October 24, 2022, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Interpretation and Policy .01 to Exchange Rule 1801 and Exchange Rules 1809(a)(3)–(5) to remove rule text related to certain indexes on which the Exchange may list and trade options.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On April 17, 2020, the Exchange filed its proposal with the Commission to amend certain of the Exchange's rules in connection with the Exchange's plan to list and trade options on five commercial real estate indexes, at that time called the Advanced Fundamentals (''AF'') Commercial Real Estate Indexes, which were comprised of the AF CRE Residential Index, AF CRE Retail Index, AF CRE Office Index, AF CRE Hospitality Index and AF CRE Composite Index (collectively, the ''AF CRE Indexes'').[3] The AF CRE Indexes were later rebranded as the BRIXX™ Commercial Real Estate Indexes (the ''BRIXX Indexes''), as follows: (1) the AF CRE Office Index was rebranded as the BRIXX Office Index; (2) the AF CRE Retail Index was rebranded as the BRIXX Retail Index; (3) the AF CRE Residential Index was rebranded as the BRIXX Residential Index; (4) the AF CRE Hospitality Index was rebranded as the BRIXX Hospitality Index; and (5) the AF CRE Composite Index was rebranded as the BRIXX Composite Index.[4]

Currently, Interpretation and Policy .01 to Exchange Rule 1801, provides a table showing the reporting authority[5] for certain indexes on which the Exchange may list and trade options, including Devexperts[6] as the reporting authority for each of the BRIXX Indexes. Further, Exchange Rules 1809(a)(3)–(5) provide that the Exchange is able to list up to twelve (12) standard monthly expirations on the BRIXX Indexes, options on the BRIXX Indexes would be European-style index options, and options on the BRIXX Indexes would be A.M-settled.[7]

Proposal

The Exchange proposes to amend Interpretation and Policy .01 to Exchange Rule 1801 and Exchange Rules 1809(a)(3)–(5) to remove rule text related to the BRIXX Indexes. Since the publication of the AF CRE Index Notice and to date, the Exchange has not listed options for trading on the BRIXX Indexes for business reasons and has determined not to list options for trading on the BRIXX Indexes in the future. Accordingly, the Exchange proposes to amend Exchange Rules 1801, Interpretation and Policy .01, and 1809(a)(3)–(5) to remove all rule text related to the BRIXX Indexes. The purpose of this change is to provide clarity in the rule text that the Exchange does not plan to list for trading options on the BRIXX Indexes.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule changes will provide greater clarity to Members[10] and the public regarding the Exchange's rules. In particular, by removing all rule text related to the BRIXX Indexes, the Exchange's rules will be clear that the Exchange does not plan to list options on the BRIXX Indexes and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition as there is no functional change to the Exchange's System and because the rules of the Exchange apply to all MIAX participants equally. The proposed rule change will have no impact on competition as it is not designed to address any competitive issue but rather is designed to add clarity to the rulebook that the Exchange will not

[3] *See* Securities Exchange Act Release No. 88767 (April 29, 2020), 85 FR 26743 (May 5, 2020) (SR–MIAX–2020–08) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Options That Overlie Five Advanced Fundamentals LLC Commercial Real Estate Indexes) (the ''AF CRE Index Notice''). The AF CRE Indexes measure real-time real estate returns representing the performance of real estate investment trusts (''REITs'') and/or publicly listed equity companies across various sectors. *See id.*

[4] *See* Securities Exchange Act Release No. 91542 (April 13, 2021), 86 FR 20426 (April 19, 2021) (SR–MIAX–2021–09).

[5] The term ''reporting authority'' with respect to a particular index means the institution or reporting service designated by the Exchange as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on the Exchange shall be Specified (as provided in Rule 1800) in the Interpretations and Policies to Rule 1801. *See* Exchange Rule 1801(p).

[6] Devexperts provides consulting and software development services for the financial industry, including calculation and reporting services, on-line and desktop trading execution platforms, risk management and fix gateways, and real-time and historical data services. *See https://devexperts.com/about-devexperts/.*

[7] *See* Exchange Rules 1809(a)(3)–(5).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

offer options for trading on the BRIXX Indexes.

In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's product offerings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2022–39 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–MIAX–2022–39. 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–MIAX–2022–39, and should be submitted on or before November 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23783 Filed 11–1–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0148]

Commercial Driver's License: Application for Exemption; National School Transportation Association; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of correction.

SUMMARY: FMCSA corrects the October 27, 2022, notice of final disposition in which the Agency announced its decision to grant the exemption requested by the National School Transportation Association (NSTA). Although the exemption expiration date is correctly stated in the **DATES** section of the notice, Section VII of the notice incorrectly identifies the expiration date. Today's correction notice is being published to remedy that error.

DATES: The effective date of this correction notice is November 2, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. Email: *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

I. Correction

The original notice of disposition published in the FR (87 FR 65114) is modified to reflect the correct date of expiration in the terms and conditions. This corrected date supersedes the date identified in the original notice of disposition.

The first sentence under ''VII. Terms and Conditions of the Exemption'' on page 65116 of the notice of final disposition is corrected to read as follows:

''This exemption covers States for the period beginning at 12:00 a.m. (ET) on November 27, 2022 and continuing through 11:59 p.m. (ET) on November 27, 2024.''

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–23830 Filed 11–1–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0063]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Drivers' Knowledge/Correct Use of New Technology Features in Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This ICR is for a new collection of information for which NHTSA intends to seek OMB approval for a one-time voluntary experiment on drivers' understanding of and behaviors using vehicles equipped with adaptive cruise control and lane centering technologies. A **Federal Register** notice with a 60-day comment period soliciting comments on the following information collection was published on July 20, 2022 (86 FR 43374–76). NHTSA received comments from two organizations, which we address below.

DATES: Comments must be submitted on or before December 2, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Kathy Sifrit, Ph.D., Office of Behavioral Safety Research (NPD–320), (202) 366–9982, National Highway Traffic Safety Administration, W46–472, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

Title: Drivers' Knowledge/Correct Use of New Technology Features in Passenger Vehicles.

OMB Control Number: New.

Form Numbers: NHTSA Forms 1627, 1628, 1629, and 1630.

Type of Request: Approval of a new information collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years from date of approval.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation is seeking approval for a one-time voluntary information collection from 180 of licensed drivers of various ages for a research study of drivers' interactions with Level 2 (L2) systems that can provide longitudinal (adaptive cruise control) and lateral (lane centering) control of the vehicle. NHTSA expects to provide screening questionnaires to 1,000 potential participants to determine their eligibility for the study. Recruiting participants for the study has an estimated burden of 250 hours for the screening questions. An estimated 200 potential participants will be eligible and interested. This group will receive the consent form with an estimated burden of 150 hours for reviewing and completing the form. An estimated 180 participants are expected to consent and enroll in the study. Participants' naturalistic driving data will be collected using a data acquisition system (DAS) installed in study-provided vehicles. The DAS includes video cameras and sensors; data also will be collected from the vehicle. Naturalistic driving data will be collected for two weeks with the L2 systems in this study unavailable to the drivers to provide a baseline measure of participants' driving habits, followed by four weeks driving with the systems available to measure changes in driving patterns as well as safety-related behaviors such as distracted driving and seat belt use. While the naturalistic data collection does not create a burden to participants, study tasks above and beyond the driving they would normally complete include a 15-minute enrollment procedure, a one-hour vehicle familiarization briefing, a two-hour training about the L2 systems, two two-hour planned drives (one at the beginning and one at the end of the study), five 30-minute planned drives (during the study), a five-minute usability questionnaire, and a 30-minute final debriefing. As such, the naturalistic study has an expected burden of 1,860 hours. In addition, half the participants will complete a 15-minute questionnaire that measures knowledge and opinions before exposure to the L2 systems and the other half will complete after exposure with an estimated burden of 45 hours. The total expected burden for this collection is 2,305 hours. NHTSA will use the information to produce a technical report containing summary statistics and tables. No identifying information or individual responses will be reported. The technical report will be made available to a variety of audiences interested in improving highway safety through the agency website and the National Transportation Library. This project involves approval by an institutional review board, which the contractor will obtain before contacting potential participants. This collection will inform the development of behavioral safety countermeasures, particularly in the areas of communications and training, intended to improve drivers' ability to use L2 systems safely.

Description of the Need for the Information and Proposed Use of the Information: NHTSA's mission is to save lives, prevent injuries, and reduce traffic-related health care and other economic costs. To further this mission, NHTSA conducts research as a foundation for the development of motor vehicle standards and traffic safety programs. Older adults comprise an increasing proportion of the driving population. Driving supports older adults' access to the goods and services they need and enhances their ability to take part in community and family activities that support quality of life. Vehicles equipped with L2 systems can reduce the cognitive load imposed by driving, which may make them appealing to older drivers who may find driving cognitively taxing, and to younger adults who may find the systems useful when navigating through heavy traffic or during long trips. However, drivers must understand what they can and cannot expect from L2 systems to use them safely and effectively. An increasing proportion of

passenger vehicles are equipped with L2 systems which, under appropriate conditions, keep the vehicle centered in the lane and manage the vehicle's acceleration/braking to stay an appropriate distance from the vehicle ahead while maintaining driving speed. Research regarding driver understanding of L2 systems has been mixed. NHTSA is concerned that drivers may over-rely on L2 systems, and engage risky behaviors such as driving while distracted, drowsy, or under the influence of alcohol or drugs. NHTSA desires to learn more about how older and young adult drivers use these systems to better target behavioral countermeasures such as communications and training to ensure that drivers use the systems safely.

60-Day Notice: A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on July 20, 2022. Two organizations submitted comments: The Alliance for Automotive Innovation (the Alliance) and the Texas Department of Transportation (TxDOT). The Alliance was generally supportive of the agency's efforts to evaluate how Level 2 (L2) systems that can provide longitudinal and lateral control of the vehicle are being used by consumers in the field and noted the importance of research in ensuring a data-driven approach to policy. They recommended some changes in project design to enhance the quality, utility, and clarity of the information to be collected. TxDOT also expressed support for the project and noted that the findings will help State departments of transportation to communicate and educate the public on how to safely use L2 systems. They also asked some questions about the study design. We appreciate the comments from Alliance and TxDOT and thank them for thoughtfully considering the proposed collection.

The Alliance provided comments about several aspects of the study design. The first topic involved how the study familiarizes participants with the L2 systems. We agree that is important to ensure that participants understand the L2 systems and that the familiarization should include information from the manufacturer. However, the Alliance indicated that the amount of time planned for familiarizing participants with the study vehicles and the two technologies is far more than is provided to car buyers under real world conditions. While we recognize that this protocol provides substantially more information and training than people typically receive or seek when buying a new vehicle, the study does not aim to replicate the level of familiarization car buyers receive from a dealership. The amount of time in this study is intended to familiarize participants with the L2 systems to minimize drivers' errors due to misunderstanding of the systems' capabilities and limitations that could arise if they use the systems without understanding and operating them appropriately. While the data collection plan (and the burden calculation) includes up to 120 minutes to provide adequate time to familiarize each participant with the vehicle, including the L2 systems, we expect the average time will be closer to 90 minutes. During this time participants will watch a video about the L2 systems, and a researcher will go over all the L2-related materials in the owner's manual, including warnings, and explain when the system will not work. A researcher will then sit in the vehicle with the participant and review the systems including the location of buttons and warnings. A researcher will then demonstrate the systems on the roadway including examples and discussions of situations when the systems may not work, and finally the participant will practice with the systems on roadways until the participant and the researcher are confident about basic system operation. The researchers are not training participants to any performance or proficiency level beyond basic understanding and operation to minimize potential errors in data collection. The Alliance also noted the importance of correctly classifying risky behaviors. The protocol described above helps minimize misclassification of driver actions that stem from misunderstanding of system capabilities as opposed to intentional risky behavior. The Alliance also recommended that NHTSA consider examining various levels of training, which would likely involve varying the length of the familiarization and the burden per participant. We agree that a study of the effects of various levels of training would be useful in developing educational materials for drivers. However, we also believe such a design would require a much larger study with significantly more participants than this proposed study and should build upon this proposed collection. NHTSA will make decisions about future research based on the findings of this study and other ongoing research.

The second topic focused on the choice of technologies. The Alliance noted that some L2 systems are limited to adaptive cruise control and lane keeping assist while others monitor driver state and support hands-free driving. They recommended that NHTSA include a variety of makes and models in the study to create more variation in the types of technologies. Since the behavioral safety research questions in this proposed study do not involve system comparisons or aim to examine system design, NHTSA plans to retain the design decision to use one vehicle to control for differences in technologies. This study design intentionally recruits participants who vary in age and sex while it aims to control for the type of system, and it is different from a design where one would include various makes and models with different designs and try to control for differences among participants. Varying both participant groups and systems would require a much larger study to have sufficient statistical power. This project's focus is drivers' behaviors while using the system. While we acknowledge the growing variety of L2 systems, we selected adaptive cruise control and lane centering for this study because they are widely available to consumers and are designed to provide similar types of driver support. We acknowledge, however, that restricting the study to a particular model requires careful selection. The goal is to select a ''typical'' or ''common'' vehicle and system and to avoid highly unusual or novel interfaces. With this goal in mind, we will select a study vehicle that provides adaptive cruise control and lane centering and is moderately priced. As such, we believe that the basic principles underlying these two systems are sufficiently similar across platforms that lessons learned about behaviors under one would generalize to others.

Another topic involved how the study classifies behaviors as ''safety related'' in the context of systems that allow hands-free operation under some conditions as well as strategies for re-engaging the driver. The L2 system for this study will not support hands-free driving, and participants will be advised to keep their hands on the wheel and to continually monitor traffic. Instances of a participant's eyes off road longer than 2 seconds or hands off the wheel will be coded as safety related (risky) behaviors.[1] The Alliance further suggested that the study should evaluate differences in strategies for re-engaging drivers based on the number of warnings and warning types as well as

[1] See ''Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices,'' 81 FR 87656 (December 5, 2016). *https://www.govinfo.gov/content/pkg/FR-2016-12-05/pdf/2016-29051.pdf.*

other factors that may impact drivers' responses to warnings or potential misuses. Addressing these research questions would require variation in system design and inclusion of vehicles that support some hands-free operation. As discussed above, these questions are beyond the scope of the project and would require a much larger study.

Another topic raised by the Alliance expressed concern about varying levels of driving experience, especially among the youngest age group, and suggested that we gather information on prior driving histories and experiences with systems in their personal vehicles. We agree that participants with varying levels of driving experience and experience with L2 systems could complicate the study and analysis. The proposed study design addresses this issue through the questions in the Screening Questionnaire (Form 1627). To qualify for the study, a person must have a valid driver's license and have been fully licensed for at least two years. The focus of this study is on drivers with little or no experience with L2 systems, so the Screening Questionnaire helps remove participants with experience driving a vehicle that comes with an L2 system. Further, participants cannot have used any adaptive cruise control, lane keeping assist, or lane centering systems five or more times. These screening requirements should ensure that participants have adequate driving experience and similar levels of L2 experience.

The Alliance's final topic involved the knowledge and opinion questionnaire (Form 1629). The Alliance recommended increasing the burden by administering the questionnaire to all participants before and after exposure to provide insights to inform communications with the public. We believe administering the questionnaire before and after L2 exposure to all participants risks carryover effects as completing the pre-exposure questionnaire would make it more likely for participants to note and remember the ''right'' responses during familiarization. This effect could undermine the validity of the post-exposure responses as a measure of what drivers learned through the course of the study.

TxDOT offered two comments regarding the design of the proposed study. The first comment noted that the proposed study involves three age groups (18 to 25, 35 to 55, and 70 and older), and they asked why it excluded drivers between the ages of 26 and 34 and 56 to 69. Recruiting in specific age groups and excluding others is a common method for comparing the effects of age because it allows substantive comparisons across age groups without potentially comparing participants whose age is only different by one year. Further, given that age is an important explanatory variable in this study, these age groups provide substantive differences across groups and could add to the statistical power to find an effect of age. Finally, TxDOT noted that the proposed study design of four weeks of observation may be too little time to measure changes in driving patterns as well as safety-related behaviors and that we should consider increasing the burden to collect more valid data over a longer period. While we agree that this proposed study is a relatively limited amount of time to collect observation data, this project focuses on drivers' behaviors during their first weeks using the systems as they become familiar with them. We believe the proposed length of time is sufficient given the findings from this study will inform development of behavioral safety countermeasures, particularly in the areas of communications and training, to improve drivers' ability to use L2 systems safely. Additionally, drivers are most likely to seek such information when they first begin using, or even before using, L2 systems.

Affected Public: Study volunteers in the Blacksburg, VA, area. The study plans to recruit participants with little to no experience driving a vehicle with L2 systems. Of the 180 selected drivers, 60 will be age 70 and older, 60 will be between the ages of 35 and 55, and 60 will be between ages 18 and 25. Equal numbers of males and females will be recruited within each age group.

Estimated Number of Respondents: The study anticipates screening 1,000 potential participants to obtain 180 drivers who meet study inclusion criteria. NHTSA expects to provide screening questionnaires to 1,000 potential participants to determine their eligibility for the study. Based upon previous research experience in the study area, an estimated 200 potential participants (20% of those who respond to screener questions) will be eligible and interested. An estimated 180 participants (90% of those who receive the consent form) are expected to consent and enroll in the study.

Frequency: This study is a one-time information collection, and there will be no recurrence.

Estimated Total Annual Burden Hours: 2,305.

The annual estimated burden is 2,305 hours. This estimate includes 250 hours for 1,000 potential participants to complete the initial screening and 150 hours for 200 potential participants to review and complete the consent form. The burden estimate also includes 1,860 hours for the 180 consented and enrolled participants to complete all study tasks above and beyond the driving they would normally complete during the naturalistic driving observation periods. The study tasks include a 15-minute process for study enrollment, a 1-hour vehicle familiarization briefing, a 2-hour training about the L2 systems, two 2-hour planned drives (one at the beginning and one at the end of the study), five 30-minute planned drivers (during the study), a five-minute usability questionnaire, and a 30-minute final debriefing. In addition, half the participants will complete a 15-minute questionnaire that measures knowledge and opinions before exposure to L2 systems and the other half will complete the questionnaire after exposure with an estimated burden of 45 hours. The total burden is the sum of the burden across screening, consenting, and completing the study for a total estimate of 2,305 hours. The details are presented in Table 1 below.

TABLE 1—ESTIMATED BURDEN HOURS BY FORM

Form	Description	Participants	Estimated minutes per participant	Total estimated burden hours per form
Form 1627	Screening Questionnaire	1,000	15	250
Form 1628	Informed Consent Briefing	200	45	150
Form 1629	Knowledge & Opinion Questionnaire	180	15	45
Form 1630	Naturalistic Study	180	620	1,860
	Enrollment		*15*	

TABLE 1—ESTIMATED BURDEN HOURS BY FORM—Continued

Form	Description	Participants	Estimated minutes per participant	Total estimated burden hours per form
	Vehicle Familiarization		*60*	
	Baseline Planned Drive		*120*	
	L2 System Familiarization		*120*	
	Five Weekly Planned Drives		*150*	
	Post-Study Planned Drive		*120*	
	Usability Questionnaire		*5*	
	Debriefing		*30*	
Total				2,305

Estimated Total Annual Burden Cost: NHTSA estimates the only cost burdens to respondents beyond the time spent on data collection activities are costs related to drives above and beyond their normal driving required by the study, which impose additional fuel costs. These cost burdens are expected to be offset by the monetary compensation that will be provided to all research participants. Participants will receive $100 after completion of the first session, $150 after completion of the baseline naturalistic driving, and $200 upon completion of the study. This compensation offsets both the participants time as well as the additional fuel costs, and the amount is in line with past similar efforts given the activities it requires of participants.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2022–23842 Filed 11–1–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

Notice of Availability of Committee on Foreign Investment in the United States Enforcement and Penalty Guidelines

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Notice of availability.

SUMMARY: By this Notice, the Department of the Treasury (Treasury Department), announces the availability of the Committee on Foreign Investment in the United States (CFIUS) Enforcement and Penalty Guidelines. These guidelines provide the public with a summary of CFIUS's practice regarding penalties and other remedies for violations of section 721 of the Defense Production Act of 1950 as amended (Section 721), the regulations promulgated thereunder, or mitigation agreements, conditions, or orders pursuant thereto (Violations).

ADDRESSES: The CFIUS Enforcement and Penalty Guidelines text is available on the CFIUS section of the Treasury Department's website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-enforcement-and-penalty-guidelines.*

FOR FURTHER INFORMATION CONTACT: David Shogren, Acting Director for Monitoring and Enforcement, Office of Investment Security; Jesse J. Sucher, Deputy Director for Monitoring and Enforcement, Office of Investment Security, (202) 622–1860.

SUPPLEMENTARY INFORMATION: Section 721 (codified at 50 U.S.C. 4565) authorizes CFIUS to impose monetary penalties and seek other remedies for Violations. *See, e.g.,* Section 721(h), (*l*). The Treasury Department has issued final rules implementing this authority. *E.g.,* 31 CFR 800.901, 800.902, 801.409, 802.901, and 802.902. The CFIUS Enforcement and Penalty Guidelines provide the public with CFIUS's practice regarding penalties and other remedies for Violations.

The CFIUS Enforcement and Penalty Guidelines are not binding on CFIUS or the public. These guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. They may be updated as circumstances require. To the extent of any inconsistency between Section 721 or the regulations at chapter VIII of title 31 of the Code of Federal Regulations, on the one hand, and the CFIUS Enforcement and Penalty Guidelines, on the other, Section 721 and the regulations prevail.

The text of the CFIUS Enforcement Guidelines is available in its entirety on the CFIUS section of the Treasury Department's website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-enforcement-and-penalty-guidelines.*

Paul M. Rosen,

Assistant Secretary of the Treasury for Investment Security.

[FR Doc. 2022–23803 Filed 11–1–22; 8:45 am]

BILLING CODE 4810– AK–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., app. 2., that the virtual meeting of the Advisory Committee on Homeless Veterans will be held on December 13, 2022. The meeting session will begin and end at 11 a.m. to 1 p.m. eastern

standard time (EST). The virtual meeting session will be open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an ongoing assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans at risk of and experiencing homelessness. The Committee shall assemble and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of assisting this Veteran population. The Committee will discuss and vote on recommendations that will be included in the Annual Report that will be submitted to the Secretary.

No time will be allocated at the meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Anthony Love, Designated Federal Officer, Veterans Health Administration Homeless Programs Office (11HPO), U.S. Department of Veterans Affairs, 811 Vermont Avenue NW (11HPO), Washington, DC 20420, or via email at *achv@va.gov.*

Members of the public who wish to attend the virtual meeting should contact Anthony Love, Designated Federal Officer, Veterans Health Administration, Homeless Programs Office, at *achv@va.gov* no later than December 1, 2022, providing their name, professional affiliation, email address, and phone number. Attendees who require reasonable accommodations should also state so in their requests.

The meeting link and call-in number is noted below:

Join Zoom Meeting: https://us06web.zoom.us/j/84990801001.

Meeting ID: 849 9080 1001.

One Tap Mobile:

+13017158592,,84990801001# US (Washington, DC)
+16469313860,,84990801001# US

Dial By Your Location:

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+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 720 707 2699 US (Denver)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
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+1 564 217 2000 US
+1 669 444 9171 US
+1 719 359 4580 US

Find your local number: https://us06web.zoom.us/u/kbjrOMXN0.

Dated: October 28, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–23831 Filed 11–1–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting, Amended

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., app. 2., that the Advisory Committee on the Readjustment of Veterans will meet in person at 811 Vermont Avenue NW, Conference Room 3166, Washington, DC 20420, on November 2, 2022—November 4, 2022. The sessions will begin and end as follows:

Dates	Times
Wednesday, November 2, 2022	8:00 a.m. to 5:00 p.m. Eastern Standard Time (EST).
Thursday, November 3, 2022	8:00 a.m. to 5:00 p.m. EST.
Friday, November 4, 2022	8:00 a.m. to 12:00 p.m. EST.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the VA regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 13 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

Additionally, the meeting will also be able to participate via Webex platform. To access the meeting, click the link: *https://veteransaffairs.webex.com/webappng/sites/veteransaffairs/meeting/info/f801e68c030b4cd7b7183e952f32a2c4?siteurl=veteransaffairs&MTID=m5880a9d5ab7017367539ba2694c2017f&meetingAuthToken=QUhTSwAAAARNadc6%2FFYS4Z%2FxsnZDDwV6jU88yxxZNLM9UxXHr%2BKiC2jahiIfikKAJekeWZBUFejU2HqaWRC4SlLeSFo9tNpfx%2BzTLp%2BrWXcXIAEeCK%2FDYSuH%2FImWHGpj5htu6yRKVOFUZsSh032g5xMutDqDsU8gNuVE1kJhL2Bu7KhNOBedU0vZ%2Fy2g4mJSjKm4ipDIw4iaX2xG9cng8pYHMYe37HM4skvNvAqrtqD67Xq2e6X4Hw%3D%3D.*

No time will be allotted for receiving oral comments from the public; however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Mr. Richard Barbato, via email at *VHARCSPlanningPolicy@va.gov* or mail at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420.

Any member of the public seeking additional information should contact Mr. Barbato at the email address noted above.

Dated: October 28, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–23857 Filed 11–1–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 211 November 2, 2022

Part II

The President

Notice of November 1, 2022—Continuation of the National Emergency With Respect to Sudan

Federal Register
Vol. 87, No. 211
Wednesday, November 2, 2022

Presidential Documents

Title 3—

The President

Notice of November 1, 2022

Continuation of the National Emergency With Respect to Sudan

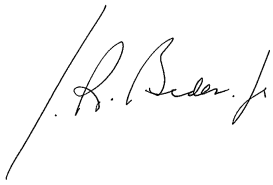
On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and took related steps to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Sudan. On April 26, 2006, by Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency declared in Executive Order 13067, and ordered the blocking of property of certain persons connected to the Darfur region. On October 13, 2006, by Executive Order 13412, the President took additional steps with respect to the national emergency declared in Executive Order 13067 and expanded in Executive Order 13400. In Executive Order 13412, the President also took steps to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

On January 13, 2017, by Executive Order 13761, the President found that positive efforts by the Government of Sudan between July 2016 and January 2017 improved certain conditions that Executive Orders 13067 and 13412 were intended to address. Given these developments, and in order to encourage the Government of Sudan to sustain and enhance these efforts, section 1 of Executive Order 13761 provided that sections 1 and 2 of Executive Order 13067 and the entirety of Executive Order 13412 would be revoked as of July 12, 2017, provided that the criteria in section 12(b) of Executive Order 13761 had been met.

On July 11, 2017, by Executive Order 13804, the President amended Executive Order 13761, extending until October 12, 2017, the effective date in section 1 of Executive Order 13761. On October 12, 2017, pursuant to Executive Order 13761, as amended by Executive Order 13804, sections 1 and 2 of Executive Order 13067 and the entirety of Executive Order 13412 were revoked.

Sudan made strides in its transition toward democracy between 2019 and 2021, but the October 2021 military takeover of the government reversed those modest gains. The crisis that led to the declaration of a national emergency in Executive Order 13067 of November 3, 1997; the expansion of that emergency in Executive Order 13400 of April 26, 2006; and the taking of additional steps with respect to that emergency in Executive Order 13412 of October 13, 2006, Executive Order 13761 of January 13, 2017, and Executive Order 13804 of July 11, 2017, has not been resolved. The situation in Darfur continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13067, as expanded by Executive Order 13400, must continue in effect beyond November 3, 2022.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 1, 2022.

[FR Doc. 2022–24046
Filed 11–1–22; 11:15 am]
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Vol. 87, No. 211

Wednesday, November 2, 2022

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