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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 10515 of January 20, 2023**

## 50th Anniversary of the *Roe* v. *Wade* Decision

**By the President of the United States of America**

**A Proclamation**

Fifty years ago, on January 22, 1973, the Supreme Court issued its landmark 7–2 decision in *Roe* v. *Wade,* protecting a woman's constitutional right to choose. This case reaffirmed basic principles of equality, reinforced the fundamental right to privacy, and resolved that women in this country could control their own destinies—making deeply personal decisions free from political interference.

The Court got *Roe* right 50 years ago. It was a balanced decision with broad national consensus that the majority of Americans have continued to support for the last 50 years. And it was a constitutional principle upheld by justices appointed by Democratic and Republican Presidents alike.

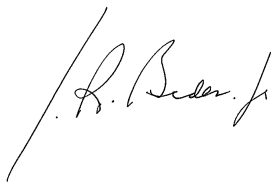
But 7 months ago, a conservative majority on the Supreme Court overturned *Roe.* Never before has the Court taken away a right so fundamental to Americans. In doing so, it put the health and lives of women across this Nation at risk. The Supreme Court opened the door for new challenges to other fundamental freedoms, including access to contraception and the right to marry whom you love. Millions of women now live in States with extreme bans on abortion, many without exceptions for rape and incest, or, where doctors can be jailed for providing reproductive care. Today, trailblazers who fought heroically for the *Roe* v. *Wade* decision are watching the next generation grow up without its protections.

On what would have been the 50th anniversary of protections under *Roe* v. *Wade,* my Administration is resolute in its commitment to defending reproductive rights and continuing our Nation's progress toward equality for all. In response to the Court's extreme *Dobbs* v. *Jackson Women's Health Organization* decision, I issued Executive Orders to ensure that patients receive care during medical emergencies; to protect access to contraception and abortion services, including access to medication approved by the Food and Drug Administration; and to improve the safety of patients, providers, and clinics. My Administration is helping to safeguard patients' privacy over their health data and is ensuring that women everywhere have access to accurate information about their reproductive rights. I also created an Interagency Task Force on Reproductive Healthcare Access to lead our Government-wide response. And senior Administration leaders, including Vice President Kamala Harris, have traveled the country listening to women, health care providers, legal experts, and State and local officials to ensure that our efforts are reaching those most in need of support.

Since the Court's decision to overturn *Roe,* Americans across the country—from California to Kansas to Michigan—have made clear at the ballot box that they believe the right to choose is fundamental and should be preserved. Still, we know that the only way to truly secure the right to choose is for the Congress to codify the protections of *Roe* v. *Wade.* I continue to call on the Congress to pass legislation to make those protections the law of the land once and for all. Until then, I will continue to use my Executive authority to protect women and families from harm in the wake of the *Dobbs* decision.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 22, 2023, as the 50th Anniversary of the *Roe* v. *Wade* Decision. I call upon Americans to honor generations of advocates who have fought for reproductive freedom, to recognize the countless women whose lives and futures have been saved and shaped by the *Roe* v. *Wade* decision, and to march forward with purpose as we work together to restore the right to choose.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



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# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2022–1421; Project Identifier MCAI–2022–01088–G; Amendment 39–22310; AD 2023–02–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Stemme AG Gliders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2022–01–09 for certain Stemme AG Model Stemme S 10–VT and Model Stemme S 12 gliders. AD 2022–01–09 required removing the affected freewheel clutch from service and prohibited the installation of affected parts. Since the FAA issued AD 2022–01–09, the European Union Aviation Safety Agency (EASA) superseded its mandatory continuing airworthiness information (MCAI) to amend the definition of an affected part. This AD retains the requirements of AD 2022–01–09 for removing the affected freewheel clutch from service and continues to prohibit the installation of an affected part, and amends the definition of an affected part and clarifies the part installation prohibition. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective March 1, 2023.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1421; 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, the MCAI, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–01–09, Amendment 39–21897 (87 FR 1666, January 12, 2022) (AD 2022–01–09). AD 2022–01–09 applied to all Stemme AG Model Stemme S 10–VT and Model Stemme S 12 gliders with a freewheel clutch part number (P/N) 12AK with a serial number starting with ''12-'' installed. AD 2022–01–09 required removing the affected freewheel clutch from service and prohibited installing an affected part on any glider. The FAA issued AD 2022–01–09 to address unintended slipping of the freewheel clutch with overheating (burnishing) of the friction pads inside of the clutch, which if not addressed, could result in a loss of thrust and consequent loss of glider control.

The NPRM published in the **Federal Register** on November 18, 2022 (87 FR 69220). The NPRM was prompted by EASA AD 2021–0278R1, dated August 11, 2022 (referred to after this as ''the MCAI''), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that the definition of affected part is amended to exclude certain modified and re-identified freewheel clutches. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1421.

In the NPRM, the FAA proposed to retain the requirements of AD 2022–01–09 for removing the affected freewheel clutch from service and continue to prohibit the installation of an affected part, and amend the definition of an affected part and clarify the part installation prohibition.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received a comment from one commenter. An individual supported the NPRM without change.

### Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, including correcting a typographical error in the Required Action and Compliance paragraph, this AD is adopted as proposed in the NPRM.

### Costs of Compliance

The FAA estimates that this AD affects 63 gliders 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 |
|---|---|---|---|---|
| Remove freewheel clutch from service ..... | 4 work-hours × $85 per hour = $340 ..... | $500 | $840 | $52,920 |

The new requirements of this AD add no additional economic burden over that already required by AD 2022–01–09.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–01–09, Amendment 39–21897 (87 FR 1666, January 12, 2022); and

■ b. Adding the following new airworthiness directive:

**2023–02–03 Stemme AG:** Amendment 39–22310; Docket No. FAA–2022–1421; Project Identifier MCAI–2022–01088–G.

**(a) Effective Date**

This airworthiness directive (AD) is effective March 1, 2023.

**(b) Affected ADs**

This AD replaces AD 2022–01–09, Amendment 39–21897 (87 FR 1666, January 12, 2022).

**(c) Applicability**

This AD applies to Stemme AG Model Stemme S 10–VT and Model Stemme S 12 gliders, all serial numbers, certificated in any category, with a freewheel clutch having part number 12AK with a serial number starting with ''12-'' installed, except those which have been modified by following the instructions of Stemme Service Bulletin Doc. No. P062–980058, Revision 02, dated April 19, 2022, and have been re-identified with ''/M'' at the end of the serial number.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7100, Powerplant System.

**(e) Unsafe Condition**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as unintended slipping of the freewheel clutch with overheating (burnishing) of the friction pads inside of the clutch. The FAA is issuing this AD to ensure removal of the affected freewheel clutch from service. The unsafe condition, if not addressed, could result in a loss of thrust and consequent loss of glider control.

**(f) Compliance**

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

**(g) Required Action and Compliance**

(1) Before further flight after the effective date of this AD, remove the freewheel clutch from service.

(2) As of the effective date of this AD, do not install a freewheel clutch part number 12AK with a serial number starting with ''12-'' on any glider, unless it has been modified by following the instructions of Stemme Service Bulletin Doc. No. P062–980058, Revision 02, dated April 19, 2022, and has been re-identified with ''/M'' at the end of the serial number.

**(h) Alternative Methods of Compliance (AMOCs)**

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 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, mail it to the address identified in paragraph (i)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. 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. AMOCs approved for AD 2022–01–09 are approved as AMOCs for the corresponding provisions of this AD.

**(i) Additional Information**

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0278R1, dated August 11, 2022, for related information. This EASA AD may be found in the AD docket at regulations.gov under Docket No. FAA–2022–1421.

(2) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

(3) For service information identified in this AD that is not incorporated by reference, contact Stemme AG, Flugplatzstrasse F2, Nr. 6–7, D–15344 Strausberg, Germany; phone: +49 (0) 3341 3612–0; fax: +49 (0) 3341 3612–30; email: *airworthiness@stemme.de;* website: *stemme.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

**(j) Material Incorporated by Reference**

None.

Issued on January 19, 2023.

**Christina Underwood,**

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

[FR Doc. 2023–01285 Filed 1–24–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF STATE

## 22 CFR Part 135

**[Public Notice: 11951]**

**RIN 1400–AF52**

## Implementation of HAVANA Act of 2021

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the initial implementation by the Department of State (the Department) of the HAVANA Act of 2021. The Act provides authority for the Secretary of State and other

agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. As noted in the interim final rule (IFR) published in June 2022, this rulemaking covers current and former Department of State employees, and dependents of current or former employees. This final rule responds to public comments and amends four provisions in the IFR, adding two additional certification Boards for physicians who can sign the Form DS–4316; clarifying the definition of ''qualifying injury to the brain;'' and adding approval for Social Security Insurance (SSI) benefits as one of the eligibility criteria for a Base Plus payment.

**DATES:** *Effective date:* This final rule is effective January 25, 2023.

**FOR FURTHER INFORMATION CONTACT:** Jenifer Moore, Advisor, Health Incident Response Task Force, email: *HIRTFstaffers@state.gov,* telephone number: 202–647–5010.

**SUPPLEMENTARY INFORMATION:** This rule implements the Helping American Victims Affected by Neurological Attacks (HAVANA) Act of 2021, Public Law 117–46, codified in 22 U.S.C. 2680b(i), which (among other things) required Department heads to publish implementing rules. The Department published an IFR on June 30, 2022 (87 FR 38981), which laid out the process for HAVANA Act claimants in a new 22 CFR part 135, and provided that physicians certified by the American Board of Psychiatry and Neurology (ABPN) could certify the Form DS–4316, *Eligibility Questionnaire for HAVANA Act Payments.* The IFR provided for 30 days of public comment. Based on some of the prevalent comments, the Department published a supplemental IFR on August 9, 2022 (87 FR 48444), which provided that physicians certified by the American Board of Physical Medicine and Rehabilitation (ABPMR) could certify the Form DS–4316. Both the IFR and supplemental IFR were effective August 15, 2022.

Further background is contained in the preamble to the IFR.

**Responses to Comments**

The Department received a total of 69 public comments in response to the IFR. Comments provided feedback under nine general categories: clinician criteria; date of injury restriction; imaging/magnetic resonance imaging scan (MRI) studies; ''other incident;'' length of qualifying medical treatment; payment eligibility criteria; qualifying injury definition; personal experience; and other. Many comments provided input on multiple subjects. Such comments were assigned to multiple categories. All comments are addressed in the aggregate below.

1. *Clinician criteria:* Thirty comments challenged the clinician certification required to determine a qualifying injury to the brain. They stated that the requirement to be diagnosed by a board-certified neurologist from the American Board of Psychiatry and Neurology (ABPN) was too narrow, and that other certifications and physician specialties should be considered.

As noted above, the Department accepted these comments and submitted a supplementary IFR to modify the provision of the IFR relating to the Board certification of the physician who is required to assess and diagnose an individual's qualifying injury to the brain and complete the Form DS–4316. In addition to the ABPN and the ABPMR, through this final rule, the Department provides that physicians currently certified by the American Osteopathic Board of Neurology and Psychiatry (AOBNP) and the American Osteopathic Board of Physical Medicine and Rehabilitation (AOBPMR) may certify the Form DS–4316. The regulatory text (§ 135.3) and the DS–4316 are being amended accordingly.

2. *Date of Injury Restriction:* Fifteen comments focused on the date of injury, all expressing a belief that people who were affected by an anomalous health incident (AHI) earlier than January 1, 2016, should be eligible for a payment. The Department is unable to accept this suggestion. The HAVANA Act specifies that payments are for incidents occurring on or after January 1, 2016. The Department may not broaden the eligibility date without an amendment to the HAVANA Act or additional legislative action authorizing additional eligibility timeframes.

3. *Imaging/MRI Studies:* Nine comments raised objections to what was perceived as a blanket requirement for imaging/MRI studies that supported a diagnosis of ''acute injury to the brain.'' This perception is not correct. An individual may submit an MRI or other imaging studies to the certified physician to demonstrate an acute injury to the brain, but that is not the only way to demonstrate a qualifying injury under the IFR. The IFR also permits individuals to submit electroencephalogram (EEG) results, physical examination results, or other appropriate testing results to their certified physician for use in their physician's assessment. The Department is adding an ''or'' between ''EEG'' and ''physical examination'' in the definition of ''Qualifying injury to the brain'' (§ 135.2), between paragraphs (2)(i) and (ii), to clarify the language, and is also amending Question 3 on the Form DS–4316 accordingly.

4. ''*Other Incident*''*:* Seven comments noted that the language of the HAVANA Act regarding the occurrence of the injury (''in connection with war, insurgency, hostile act, or other incidents designated by the Secretary of State'') was very broad. With regard to ''other incidents'', the commenters stated that this language makes the determination subjective and not measurable, and asked how those who would be denied would know that the decision was made using objective criteria. One commenter expressed concern over who would determine that an ''attack'' had occurred.

The definition of ''other incident'' in the IFR is: ''A new onset of physical manifestations that cannot otherwise be readily explained.'' For each request for payment, the Department will review available information on the reported incident, including any investigations that may have been conducted. If the reports and the results of investigations do not provide a credible alternate explanation for the incident, that incident will be recommended for designation by the Secretary of State or their designee. Incidents for which an explanation has been identified will not be recommended for designation.

The list of reported incidents will be administratively controlled and will not be made public in order to ensure privacy for everyone who has reported an AHI. The IFR refers to only those from 2016 to the present because, as defined in the Act, only incidents that occurred on or after January 1, 2016, are eligible for payment. The Department maintains a list of all reported incidents; that list is not time-limited.

In the event of an adverse decision on a request for payment under the HAVANA Act, the Department has established an appeals process by which an individual may request further consideration.

5. *Length of Qualifying Medical Treatment:* Nine comments provided feedback on the length of qualifying medical treatment criteria. All comments disagreed that 12 months of qualifying medical treatment should be a requirement, with several suggesting that the time period be shorter—for example, three months instead of 12 months. Some proposed that the 12 months of treatment be replaced with other criteria, citing examples such as, receiving prescription medication or therapy for brain injury-related conditions such as migraines, vertigo, vision problems, and hearing loss.

Another commenter suggested that the required 12 months of medical treatment be replaced with language that the ''demonstrated effect of injury'' was expected to last more than 12 months. The same comment expressed concern that covered employees who have been evaluated, but not yet had access to treatment, would not qualify otherwise and are excluded.

Individuals may be eligible for a HAVANA Act payment if they meet one of three criteria under the definition of ''qualifying injury to the brain'': (1) an acute injury to the brain, such as, but not limited to, a concussion or penetrating injury, or as a consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computer tomography scan (CT) or MRI) or EEG; or (2) a medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or (3) acute onset of new persistent, debilitating neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing and that required active medical treatment for 12 months or more.

Of those three criteria, only (2) and (3) require 12 months of treatment, which would demonstrate that the individual suffers from a chronic condition.

Even if a covered individual has not yet received 12-months or more of treatment as outlined in (2) or (3), the covered individual may nevertheless qualify at a later time if treatment lasts for twelve months or more. Such individuals are not excluded but will have to meet the criteria to be eligible for a payment.

6. *Payment eligibility criteria:* Thirty-three comments discussed various aspects of the payment eligibility criteria. The majority of the comments expressed concern about who was eligible for payments. Another subset of comments questioned how eligibility is to be (or can be) determined without a clear definition or known cause of AHI. An additional comment raised a question about adequate funding for payments under the Act. The Department anticipates that resources will be available to provide payments to those who meet the eligibility criteria. One commenter asked what would happen if the Department underestimated the costs needed to pay all eligible requesters. The Department anticipates that resources will be available to provide payments to those who meet the eligibility criteria.

Fourteen comments stated that the payment eligibility criteria should be expanded, challenged the scope of ''covered individuals'' defined in the Act, and specifically mentioned unpaid interns and Embassy Science Fellows as examples of persons who should be included. The Department agrees that the payment eligibility criteria should be expanded to include unpaid interns and will consequently insert ''students providing volunteer services under 5 U.S.C. 3111'' after ''Temporary Appointments'' in the definition of ''covered employee.'' The Department believes that Embassy Science Fellows are also covered under the definition of ''covered employee'', unless they are an employee of another Federal agency. In the latter case, the employing agency would be responsible for making a determination for payment and making a payment if qualified under that agency's rules. Additionally, the definition of covered employee has no reference to nationality, and employees who are citizens of other countries may qualify if they otherwise meet the criteria for payment.

The State Department drafted the IFR in close coordination with the interagency and National Security Council. As contemplated by Congress, other Federal agencies will need to prepare their own rules for implementation of the HAVANA Act.

Another comment questioned the objective capability of the Department to determine eligibility and award payment and suggested that a neutral outside board do so instead. The Department disagrees. For each request for payment, the Department will rely on the submission from the independent board-certified physician who completed the Form DS–4316, as well as available information on the reported incident, including any investigations that may have been conducted.

One comment stated that bodily injuries caused by AHI should be eligible for payments under the Act. The Department notes that the HAVANA Act of 2021 specifically authorizes payments for qualifying ''injuries to the brain,'' not ''bodily injuries''.

Another comment shared a belief that the Department should make HAVANA Act payments posthumously to family members who had died because of mental health issues, arguing that not enough investigation has been done into the impacts of AHI on mental health illness. The Department notes that the HAVANA Act of 2021 specifically authorizes payments for qualifying ''injuries to the brain,'' not for mental health illnesses.

Several comments pointed out that there was no definition for or known cause of AHI and asked how it would be possible to determine who would qualify under the HAVANA Act, which they viewed as too broad and susceptible to abuse. Conversely, multiple comments expressed concern that the medical requirements to show an injury to the brain were too stringent. In response, the Department notes that, recognizing that the nature of AHI includes a lack of consensus by the medical and scientific communities, the definition of ''qualifying injury to the brain'' in the IFR was written to be comprehensive, respect congressional intent, and allow the physician completing the Form DS–4316 to consider appropriate medical information and context.

Two comments proposed alternate/additional payment eligibility criteria under § 135.3, *Eligibility for payments by the Department of State,* including allowing covered employees who have a Department-approved reasonable accommodation to be eligible for a Base Plus HAVANA Act payment. One comment said that a medical retirement from the Department should be sufficient to qualify for a Base Plus HAVANA Act payment.

In response to these two comments, the Department notes that it developed the eligibility criteria for a Base Plus payment under § 135.3 of the rule to cover individuals who have no employment potential with or without a reasonable accommodation. The Department believes that the four separate options for meeting the criteria in § 135.3(e)(2) represent a fair and consistent approach to determining Base Plus payments. In addition, the Department has added approval for Social Security Insurance (SSI) benefits as one of the eligibility criteria for a Base Plus payment.

7. *Qualifying Injury:* The Department received 24 comments related to qualifying injury. Several comments noted that the IFR's definition of ''qualifying injury to the brain'' was not an actual definition, was too broad, and was open to ''vast'' interpretation. They asked if multiple sclerosis, idiopathic tics, dementia, epilepsy, Parkinson's, and several other medical conditions would qualify as an eligible injury. Other comments pointed out that traditional imagery is not likely to accurately identify changes to the brain, and that other documentation should be accepted or required, including vestibular tests. Likewise, some comments asserted a belief that TBI was a required diagnosis to qualify (which is inaccurate). Others expressed fraud and

abuse concerns as taxpayers on the potential monetary scope of payments under the Act. They stated their belief that AHIs were not real and noted that there is no International Classification of Diseases, Tenth Revision (ICD–10), diagnosis code for AHI. Therefore, there would be no way to ensure that prospective recipients had been affected by an AHI, as opposed to other causative factors.

Recognizing that the nature of AHI includes a lack of consensus by the medical and scientific communities, the definition of ''qualifying injury to the brain'' in the IFR was written to be comprehensive, respect congressional intent, and allow the physician completing the Form DS–4316 to consider appropriate medical information and context. ''Acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam or other appropriate testing . . .'' recognizes that the board-certified physician who completes the Form DS–4316 may exercise their professional judgment as to what elements are relevant. An ICD–10 diagnosis code specifically for AHI is not necessary as payments are for qualifying injuries to the brain, which will have one or more relevant ICD–10 codes.

Another comment specifically focused on children of affected covered employees, who reportedly did not receive evaluation of a possible AHI when their parent(s) were medically evacuated as the result of a suspected AHI. The comment states the writer's belief that dependents of AHI-affected employees should automatically qualify for a HAVANA Act payment without medical documentation, based on their parent(s)' injury. The Department notes that eligibility for a HAVANA Act payment under the IFR requires a currently board-certified physician to make a determination based in part on medical documentation submitted to the physician by the requester, and to complete the Form DS–4316 for each requester. Children of affected covered employees who may not have been evaluated at the time of the parent(s)' medevac may qualify for a payment if they meet the eligibility criteria.

The Department also notes that imagery is one of several means by which requesters can establish eligibility for payment, and that the certifying physician will consider all available medical documentation when assessing the requester's condition. A diagnosis of a TBI is a non-exclusive criterion to potentially demonstrate eligibility under the HAVANA Act, and there are other ways in which an individual may meet the medical requirement, as listed in the definition. Regarding the concern that the injury may have been caused by factors other than an AHI, the physician must certify that they do not ''have evidence or otherwise believe that the [requester's] symptoms can be attributed to a pre-existing condition.''

8. *Personal Experience:* Three comments shared detailed accounts of individual experiences. One comment expressed frustration that the Department of Defense has not implemented its policy or procedures regarding the HAVANA Act. Another comment shared the commenter's experiences related to clinician care for AHI. The third shared the commenter's AHI experience. The Department of State respects and recognizes the service of persons from numerous departments, agencies, and institutions, public and private, who are working or have worked to advance the interests of the United States. The Department's IFR only covers persons who were employed by the State Department and dependents of those persons when the reported AHI occurred. Other U.S. Federal Government agencies will need to complete their own rulemaking process to evaluate payment eligibility.

9. *Other:* The Department received three comments that provided input on issues that are outside the scope of this rulemaking, including recommendations/comments on compensating employees for lost career growth as a result of an AHI; a belief that the Department must work with the Department of Labor (Federal Employees' Compensation Act (FECA)) on FECA requirements for TBI; and speculation about directed energy weapons. One commenter took the opportunity to address another comment with which they disagreed. The Department also received an email from an individual who felt that the Department's ''product'' was linking to their family's devices.

The Department has a process to compensate employees for demonstrated lost career growth as a result of an AHI. It was given this authority under previous legislation. The Department also works closely with the Department of Labor on FECA claims filed by its employees, but the Department of Labor sets the requirements for eligibility for FECA benefits.

**Regulatory Analysis**

*Administrative Procedure Act*

This rule is being published as a final rule. Because this rule is a matter relating to public benefits, it is exempt from the requirements of 5 U.S.C. 553. *See* 5 U.S.C. 553(a)(2). Since the rule is exempt from the entirety of section 553 pursuant to section 553(a)(2), the provisions of section 553(d) do not apply and the rule will be in effect upon publication.

*Congressional Review Act*

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808).

*Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any year; and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Regulatory Flexibility Act: Small Business*

The Department of State certifies that this rulemaking will not have an impact on a substantial number of small entities. A regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

*Executive Order 12866 and Executive Order 13563*

The Department of State has provided this final rule to OMB for its review. OIRA has designated this rule as ''significant'' under Executive Order 12866. Potential causes of AHI are being investigated but remain unknown. Given the nature of the incidents, it is difficult to accurately estimate future incidents and numbers of individuals

affected. The Department approved/obligated funds for five cases totaling $796,025 by the expiration of Fiscal Year (FY) 2022 on September 30. This is below our previous FY 22 estimate of $1,545,225 primarily because we did not begin accepting requests for payment until 45 days before the end of the fiscal year. For FY 2023, the estimated numbers are up to $7.3 million for 47 people. The Department has also reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and finds that the benefits of the rule (in providing mechanisms for individuals to obtain compensation for certain injuries) outweigh any costs to the public, which are minimal. The Department of State has also considered this rulemaking in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

*Executive Order 12988*

The Department of State has reviewed this rule in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Orders 12372 and 13132*

This rule will not have substantial direct effect on the states, on the relationships between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities, does not apply to this regulation.

*Paperwork Reduction Act*

This rulemaking is related to an information collection for the Form DS–4316, ''Eligibility Questionnaire for HAVANA Act Patients,'' OMB Control Number 1405–0250. This collection was approved under an emergency authorization. After OIRA approved the changes, the DS–4316 has been revised in accordance with the supplemental IFR and this final rule. The Department published a 60-day notice on September 9, 2022 (87 FR 55456). No public comments were received. The Department published a 30-day notice on November 21, 2022 (87 FR 70887) and OIRA approved the information collection on January 13, 2023.

**List of Subjects in 22 CFR Part 135**

Federal retirees, Government employees, Health care.

Accordingly, for the reasons stated in the preamble, the interim rules adding and amending 22 CFR part 135, which were published on June 30, 2022 (87 FR 38981), and August 9, 2022 (87 FR 48444), are adopted as final with the following changes:

## PART 135—IMPLEMENTATION OF THE HAVANA ACT OF 2021

■ 1. The authority citation for part 135 continues to read as follows:

**Authority:** 22 U.S.C. 2651a; 22 U.S.C. 2680b.

■ 2. Amend § 135.2 as follows:

■ a. By revising paragraph (2) of the definition of ''Covered employee'' and paragraph (2) of the definition of ''Qualifying injury to the brain''; and

■ b. By placing the definition of ''Other incident'' into alphabetical order.

The revisions read as follows:

### § 135.2 Definitions.

* * * * *

*Covered employee.* * * *

(2) The following are considered employees of the Department (see procedures in 3 FAM 3660 and its subchapters) for the purposes of this part: Department of State Foreign Service Officers; Department of State Foreign Service Specialists; Department of State Civil Service employees; Consular Affairs—Appointment Eligible Family Member Adjudicator positions; Expanded Professional Associates Program members; Family Member Appointments; Foreign Service Family Reserve Corps; employees on Limited Non-Career Appointments; Temporary Appointments; students providing volunteer services under 5 U.S.C. 3111; personnel on a Personal Services Contract; Locally Employed Staff, whether employed on a Personal Services Agreement, Personal Services Contract, or appointed to the position; and Embassy Science Fellows, unless they are an employee of another Federal agency.

* * * * *

*Qualifying injury to the brain.* * * *

(2) The individual must have:

(i) An acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT) or magnetic resonance imaging scan (MRI)) or electroencephalogram (EEG); or

(ii) A medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or

(iii) Acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

■ 3. Amend § 135.3 by revising paragraphs (a) through (c) and (e)(2) to read as follows:

### § 135.3 Eligibility for payments by the Department of State.

(a) The Department of State may provide a payment to covered individuals, as defined in this part, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Osteopathic Board of Physical Medicine and Rehabilitation (AOBPMR); occurred on or after January 1, 2016; and while the individual was a covered employee of the Department.

(b) The Department of State may provide a payment to covered employees, as defined in this part, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBPMR; occurred on or after January 1, 2016; and while the employee was a covered employee of the Department.

(c) The Department of State may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBPMR; occurred on or after January 1, 2016; and the dependent's sponsor was a covered employee of the Department at the time of the dependent's injury.

* * * * *

(e) * * *

(2) Whether the Department of Labor (Workers' Compensation) has determined that the requester has no reemployment potential; or the Social Security Administration has approved the requester for either Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits; or the requester's ABPN, AOBNP, ABPMR, or

AOBPMR board-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

* * * * *

**Kevin E. Bryant,**

*Deputy Director, Office of Directives Management, U.S. Department of State.*

[FR Doc. 2023–01410 Filed 1–24–23; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 5 and 200

**[Docket No. FR–6160–N–03]**

### Notice of Modification to the Demonstration To Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols

**AGENCY:** Office of the Assistant Secretary for Housing; Office of the Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

**ACTION:** Demonstration modification.

**SUMMARY:** Through this notification, HUD announces changes to the Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols (NSPIRE). This demonstration allows HUD to test the NSPIRE standards and protocols as the means for assessing the physical conditions of HUD-assisted and HUD-insured housing. Through this notification, HUD is informing Demonstration participants who are subject to HUD's Multifamily Housing program that Demonstration participants will receive an inspection of record through the NSPIRE demonstration unless they opt out of the demonstration, in which case they will receive an inspection of record through the Uniform Physical Condition Standards (UPCS). HUD is also revising this demonstration so that the demonstration ends on the effective date of the NSPIRE final rule.

**DATES:** This demonstration modification is effective January 25, 2023.

**FOR FURTHER INFORMATION CONTACT:** Marcel M. Jemio, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410–4000, telephone number 202–708–1112 (this is not a toll-free number) or via email to *NSPIRE-Demo-Opt-Out@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:** On August 21, 2019 (84 FR 43536), the U.S. Department of Housing and Urban Development published a document implementing the ''Demonstration To Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols.'' (''the 2019 document''). Through this demonstration, HUD is collecting, processing, and evaluating physical inspection data and information, and is improving and refining the NSPIRE model. On September 28, 2021 (86 FR 53570), HUD extended this demonstration through October 1, 2021.

During this demonstration, participants have not received an inspection of record, meaning the result of the inspection is provisional and does not result in a traditional score that is recorded in Multifamily Housing's system of record, the Integrated Real Estate Management System (iREMS). Because the demonstration has been running since 2019, demonstration participants have not received an inspection of record for several years, longer than HUD intended when HUD initially established the demonstration. Therefore, HUD seeks to prioritize providing demonstration participants an inspection of record. Through this notification, HUD is informing Multifamily Housing program participants who are currently in this demonstration and have yet to receive an inspection of record since joining the demonstration that between April 1, 2023, and September 30, 2023, HUD intends to conduct an inspection using the NSPIRE standards and scoring and that this inspection will be considered an inspection of record.

Demonstration participants who do not wish to be subject to an NSPIRE inspection of record before October 1, 2023, may choose to opt out of the NSPIRE demonstration by submitting a request via email to *NSPIRE-Demo-Opt-Out@hud.gov* no later than March 1, 2023. Demonstration participants who opt out of the demonstration will be subject to a UPCS inspection of record.

Additionally, through this notification, HUD is revising the end of this demonstration to align with the NSPIRE final rule. The demonstration will end for Public Housing participants on June 30, 2023, the day before HUD intends to begin inspections under NSPIRE for Public Housing, and the demonstration will end for Multifamily Housing participants on September 30, 2023, one day before the day HUD intends the NSPIRE final rule to take effect for Multifamily Housing. HUD will provide additional notice through **Federal Register** notice should these dates change.

This Notification provides operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this Notification is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*)

**Dominique G. Blom,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 2023–01354 Filed 1–24–23; 8:45 am]

**BILLING CODE 4210–67–P**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1400

**RIN 3076–AA22**

### Code of Professional Conduct for Labor Mediators

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) hereby publishes this final rule on the decision to draft a new code of professional conduct for FMCS mediators.

**DATES:** This final rule is effective February 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Anna Davis, General Counsel, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E St. SW, Washington, DC 20427; Office/Fax/Mobile 202–606–3737; *register@fmcs.gov.*

**SUPPLEMENTARY INFORMATION:** In 1964, a Code of Professional Conduct for Labor Mediators was drafted by a Federal-State Liaison Committee and approved by the Federal Mediation and Conciliation Service (FMCS) and the Association of Labor Mediation Agencies. On April 13, 1968, at 33 FR 5765, the Federal Mediation and Conciliation Service (FMCS) published

a final rule entitled ''Code of Professional Conduct for Labor Mediators.'' This final rule adopted and codified the Code of Conduct for Labor Mediators. This Code has not been updated in nearly sixty years and no longer reflects the agency's values, scope of services provided by FMCS mediators, or best practices for conflict management and resolution services. Therefore, FMCS is creating a new code of professional conduct and is updating this rule to reference this internal Code of Professional Conduct for FMCS Mediators.

**List of Subjects in 29 CFR 1400**

Administrative practice and procedure and Labor management relations.

For the reasons set forth in the preamble, and under the authority 29 U.S.C. 172 of the Taft Harley Act of 1947, FMCS propose to amend 29 CFR chapter XII part 1400 as follows:

## PART 1400—STANDARDS OF CONDUCT, RESPONSIBILITIES, AND DISCIPLINE

■ 1. The authority citation for part 1400 continues to read as follows:

**Authority:** E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104. Section 1400.735–20 also issued under 29 U.S.C. 172.

### Subpart B—Employees: Ethical and Other Conduct and Responsibilities

■ 2. Revise § 1400.735–20 to read as follows:

**§ 1400.735–20 Code of Professional Conduct for FMCS Mediators.**

The Federal Mediation and Conciliation Service has a Code of Professional Conduct for FMCS Mediators. Mediators in the Federal Mediation and Conciliation Service are required to conduct themselves in accordance with the responsibilities outlined therein.

Dated: January 18, 2023.

**Anna Davis,**

*General Counsel.*

[FR Doc. 2023–01204 Filed 1–24–23; 8:45 am]

**BILLING CODE 6732–01–P**

## POSTAL SERVICE

## 39 CFR Part 111

## Post Office Box Fee Refund

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to clarify the refund policy for customers who qualified for a Group ''E'' (free) Post Office Box™. The Postal Service is also making an amendment for consistency with refund standards.

**DATES:** Effective March 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Phong T. Quang at (202) 268–2857 or Garry Rodriguez at (202) 268–7281.

**SUPPLEMENTARY INFORMATION:** On December 13, 2022, the Postal Service published a notice of proposed rulemaking (87 FR 76170–76171) to clarify the refund policy for customers who qualified for a Group ''E'' (free) P.O. Box. The Postal Service did not receive any customer comments.

To ensure uniform treatment of customers who were not provided Group E P.O. Box service, the Postal Service is providing a refund policy if it has been determined that a customer paying for P.O. Box service is entitled to Group E P.O. Box service. A refund of prorated fees may be issued for each full consecutive month preceding the determination, up to a maximum of 24 months. Interest will not be paid on the amount refunded.

The Postal Service is also making a minor revision to the text in subsection 508.4.5.2c for clarity in the standard and in subsection 604.9.0 to establish a link to the P.O. Box fee refund standards in subsection 508.4.6.

We believe the proposed revisions will provide customers with a more efficient mailing experience.

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

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

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

## PART 111—[AMENDED]

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

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

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

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

* * * * *

**500 Additional Services**

* * * * *

**508 Recipient Services**

* * * * *

**4.0 Post Office Box Service**

* * * * *

**4.5 Fee Group Assignments**

* * * * *

**4.5.2 Fee Group E—Free P.O. Box Service**

Customers may qualify for Group E (free) P.O. Box service at a Post Office if their physical address location meets all of the following criteria:

* * * * *

*[Revise the first sentence of item c to read as follows:]*

c. USPS does not provide carrier delivery to a mail receptacle at or near a physical address for reasons other than those in 4.5.3b. * * *

* * * * *

**4.6 Fee Refund**

* * * * *

*[Add new 4.6.3 to read as follows:]*

**4.6.3 Group E P.O. Box Service Fee Refund**

If a postmaster determines that a customer paying for P.O. Box service was entitled to Group E (free) P.O. Box service under 4.5.2, a refund of prorated fees may be issued for each full consecutive month preceding the determination, up to a maximum of 24 months. Interest is not paid on the amount refunded.

* * * * *

**600 Basic Standards for All Mailing Services**

* * * * *

**604 Postage Payment Methods and Refunds**

* * * * *

**9.0 Exchanges and Refunds**

* * * * *

*[Add new 9.6 to read as follows:]*

**9.6 Post Office Box Fee Refunds**

Fee refunds for P.O. Box service are provided under 508.4.6.

* * * * *

**Tram T. Pham,**

*Attorney, Ethics and Legal Compliance.*

[FR Doc. 2023–01350 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2021–0305; FRL–10494–01–OCSPP]**

### Malic Acid; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of malic acid when used as an inert ingredient (buffering and stabilizing agent) on growing crops. Valent BioSciences, LLC, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of malic acid, when used in accordance with the terms of these exemptions.

**DATES:** This regulation is effective January 25, 2023. Objections and requests for hearings must be received on or before March 27, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0305, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0305 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before March 27, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0305, by one of the following methods:

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

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

## II. Petition for Exemption

In the **Federal Register** of July 20, 2022 (87 FR 43231) (FRL–9410–03–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11559) by Valent BioSciences, LLC, 1910 Innovation Way, Suite 100, Libertyville, Il 60048. The petition requested that 40 CFR be amended by establishing an exemption from the requirement of a tolerance for residues of malic acid (CAS Reg. No. 6915–15–7) when used as an inert ingredient (buffering and stabilizing agent) in pesticide formulations applied to growing crops pre-harvest under 40 CFR 180.920. That document referenced a summary of the petition prepared by Valent BioSciences, LLC, the petitioner, which is available in the docket, *https://www.regulations.gov.* There were no relevant comments received in response to the notice of filing.

## III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not

intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

## IV. Aggregate Risk Assessment and Determination of Safety

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

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

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

### *A. Toxicological Profile*

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

The toxicological database of malic acid is supported by data regarding fumaric acid. EPA has determined that it is appropriate to bridge fumaric acid data to assess malic acid due to fumaric acid being metabolized to malic acid in biological systems.

The available toxicity studies indicate that malic acid has low overall toxicity. Malic acid has low acute toxicity via the oral route, it is anticipated to have low acute inhalation toxicity based on a study with fumaric acid, and it is anticipated to have low acute dermal toxicity, based on its low absorption through human skin. Malic acid is an eye and dermal irritant, but it is not a skin sensitizer.

No adverse effects were reported in a chronic toxicity study in rats or in the chronic toxicity study in dogs. There were also no maternal or developmental effects observed up to 350 mg/kg/day in a developmental study in rats and up to 266 mg/kg/day in a developmental study in mice. No parental or reproductive effects were observed in a reproductive toxicity study in rats. This same reproductive toxicity study reported labored breathing and weakness in offspring at the highest dose tested (1,020 mg/kg/day). However, since these effects occurred only at limit dose levels and there were no histopathological findings in the lungs, they are not considered relevant for risk assessment purposes. There was also no evidence of mutagenicity in the available studies and no structural alerts for carcinogenicity were found for malic acid. No evidence of neurotoxicity or immunotoxicity was observed in the available database.

### *B. Toxicological Points of Departure/ Levels of Concern*

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

The hazard profile of malic acid is adequately defined. Overall, malic acid is of low acute, subchronic, and developmental toxicity. No systemic toxicity is observed at doses that are relevant for risk assessment. Since signs of toxicity were not observed, no toxicological endpoints of concern or PODs were identified. Therefore, a qualitative risk assessment for malic acid can be performed.

### *C. Exposure Assessment*

1. *Dietary exposure from drinking water, food and feed uses.* In evaluating

dietary exposure to malic acid, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from malic acid in food as follows:

Dietary exposure (food and drinking water) to malic acid may occur from eating foods treated with pesticide formulations containing this inert ingredient and drinking water containing runoff from soils containing the treated crops. Dietary exposure may also occur from non-pesticidal sources (*e.g.,* food additive uses and natural presence in fruits and wine). However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

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

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

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

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

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

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

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

*E. Aggregate Risks and Determination of Safety*

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to malic acid residues.

## V. Other Considerations

*Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

## VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of malic acid (CAS Reg. No. 6915–15–7) when used as an inert ingredient (buffering and stabilizing agent) in pesticide formulations applied to growing crops pre-harvest under 40 CFR 180.920.

## VII. Statutory and Executive Order Reviews

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

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

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

This action does not involve any technical standards that would require

Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### VIII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 2023.

**Daniel Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

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

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

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

■ 2. In § 180.920, amend Table 1 to 180.920 by adding, in alphabetical order, an entry for ''Malic acid (CAS Reg. No. 6915–15–7)'' to read as follows:

**§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.**

* * * * *

TABLE 1 TO 180.920

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * * * | | |
| Malic acid (CAS Reg. No. 6915–15–7) | | Buffering and stabilizing agent. |
| * * * * * * * | | |

[FR Doc. 2023–01155 Filed 1–24–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2021–0447; FRL–10478–01–OCSPP]**

## Rimsulfuron; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of rimsulfuron in or on pomegranate and tropical and subtropical, small fruit, edible peel, subgroup 23A. The Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective January 25, 2023. Objections and requests for hearings must be received on or before March 27, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0447, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0447 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 27, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be

disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0447, by one of the following methods:

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

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

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 22, 2021 (86 FR 52624) (FRL–8792–03–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8926) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.478 be amended by establishing tolerances for residues of the herbicide rimsulfuron (N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide), in or on pomegranate at 0.01 parts per million (ppm) and tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.01 ppm. There were no comments received in response to the notice of filing.

## III. Aggregate Risk Assessment and Determination of Safety

FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' FFDCA section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. FFDCA section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for rimsulfuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with rimsulfuron follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemaking of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemaking and republishing the same sections is unnecessary. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a tolerance rulemaking for rimsulfuron in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to rimsulfuron and established tolerances for residues of that chemical. EPA is incorporating previously published sections from this rulemaking as described further in this rulemaking, as they remain unchanged.

*Toxicological profile.* For a discussion of the Toxicological Profile of rimsulfuron, see Unit III.A of the February 12, 2018, final rulemaking (83 FR 5942) (FRL–9972–36).

*Points of departure/Levels of concern.* A summary of the toxicological endpoints for rimsulfuron used for human risk assessment is discussed in Unit III.B of the February 12, 2018, final rulemaking.

*Exposure assessment.* Much of the exposure assessment remains the same although updates have occurred to accommodate the exposures from the petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C of the February 12, 2018, final rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposures from the new uses of rimsulfuron on pomegranate and tropical and subtropical, small fruit, edible peel, subgroup 23A. An unrefined chronic dietary (food and drinking water) exposure and risk assessment was conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 4.02. This software incorporates 2005–2010 consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The chronic assessment used tolerance level residues for all crops and assumed that 100% of the crops were treated with rimsulfuron. The Agency's default processing factors were used where available. An acute dietary exposure assessment was not conducted since there was no adverse effect observed for a single dose of rimsulfuron.

*Dietary exposure from drinking water.* The new uses do not result in an increase in the estimated residue levels in drinking water, so EPA used the same estimated drinking water concentrations in the chronic dietary assessment as identified in Unit III.C of the February 12, 2018, rulemaking.

*From non-dietary exposure.* There are no proposed residential uses at this time; however, there are existing residential uses on turf that have been previously assessed using current data and assumptions. For the residential assessment of the turf uses, EPA did not conduct a quantitative residential handler risk assessment. The end use label requires handlers to wear specific clothing (long-sleeve shirt and long pants) and chemical-resistant gloves, so EPA assumed the product is not for homeowner use. There is the potential for post-application dermal exposures; however, a residential post-application dermal exposure assessment was not conducted because no dermal hazard was identified in the rimsulfuron database. The quantifiable post-application residential risk estimates reflect incidental oral exposure to children 1 to less than 2 years old from hand-to-mouth exposure to turf treated with rimsulfuron. The margin of exposure (MOE) is 26,000, which is greater than the level of concern of 100 and is not of concern.

*Cumulative effects from substances with a common mechanism of toxicity.* In 2016, EPA's Office of Pesticide Programs released a guidance document entitled, Pesticide Cumulative Risk Assessment: Framework for Screening Analysis *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/pesticide-cumulative-risk-assessment-framework.* The agency has utilized this framework for rimsulfuron and determined that although rimsulfuron shares some chemical and/or toxicological characteristics (*e.g.,* chemical structure or apical endpoint) with other pesticides, the toxicological database does not support a testable hypothesis for a common mechanism of action. No further data are required to determine that no common mechanism of toxicity exists for rimsulfuron and other pesticides and no further cumulative evaluation is necessary for rimsulfuron.

*Safety factor for infants and children.* EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor (SF) from 10X to 1X for all risk scenarios. See Unit III.D. of the February 12, 2018, final rulemaking for a discussion of the Agency's rationale for that determination.

*Aggregate risks and Determination of safety.* EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and the chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate MOE exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

An acute dietary exposure assessment was not conducted since there was no adverse effect observed for a single dose of rimsulfuron. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 1.8% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure.

The short-term aggregate exposure assessment for children 1 to less than 2 years old includes dietary (food and drinking water) and incidental oral exposure from hand-to-mouth activities from post-application exposure to turf. The short-term aggregate risk estimate for children 1 to less than 2 years old is an MOE of 3,700, which is greater than the level of concern of 100 and is not of concern. Acute risks are not expected due to no adverse effect observed for a single dose of rimsulfuron; and chronic aggregate risks to adults and children are equivalent to the dietary (food and drinking water) risks for those respective assessments and are not of concern. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD, no further assessment of intermediate-term risk is necessary. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, rimsulfuron is not expected to pose a cancer risk to humans.

Therefore, based on the risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to rimsulfuron residues. More detailed information on this action can be found in the document ''Rimsulfuron. Human Health Risk Assessment in Support of a Petition for the Establishment of Permanent Tolerances on Pomegranate and Tropical and Subtropical, Small Fruit, Edible Peel, Subgroup 23A'' in docket ID No. EPA–HQ–OPP–2021–0447.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

For a discussion of the available analytical enforcement method for various crops, see Unit IV.A of the February 12, 2018, rulemaking.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). Codex has not established MRLs for residues of rimsulfuron in or on any commodity associated with this action.

## V. Conclusion

Therefore, tolerances are established for residues of rimsulfuron (N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide), in or on pomegranate at 0.01 ppm and tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.01 ppm.

In addition, as a housekeeping measure, EPA is removing the tolerance for potato at 0.1 ppm, which expired on August 12, 2018, and has no effect at this time.

## VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November

9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### VII. Congressional Review Act (CRA)

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

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 2023.

**Daniel Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

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

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

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

■ 2. In § 180.478, in paragraph (a) amend table 1 by:
■ a. Adding in alphabetical order the entry ''Pomegranate'';
■ b. Removing the entry for ''Potato'' and the footnote; and
■ c. Adding in alphabetical order the entry ''Tropical and subtropical, small fruit, edible peel, subgroup 23A''.

The additions read as follows:

### § 180.478 Rimsulfuron; tolerances for residues

(a) * * *

TABLE 1 TO PARAGRAPH (a)

| Commodity | Parts per million |
|---|---|
| * * * * * * * | |
| Pomegranate | 0.01 |
| * * * * * * * | |
| Tropical and subtropical, small fruit, edible peel, subgroup 23A | 0.01 |
| * * * * * * * | |

* * * * *

[FR Doc. 2023–01131 Filed 1–24–23; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 68

**[Docket Number—NIH–2020–0001]**

**RIN 0925–AA68**

## National Institutes of Health Loan Repayment Programs

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), is updating the existing regulation for NIH Loan Repayment Programs (LRPs) to reflect the consolidation of NIH LRPs into two programs, the Intramural Loan Repayment Program (for NIH researchers) and the Extramural Loan Repayment Program (for non-NIH researchers); the direct authority of the NIH Director to administer the NIH LRPs (formerly the duty of the Secretary, HHS); and the increase in the annual loan repayment amount from a maximum of $35,000 to a maximum of $50,000.

**DATES:** This final rule is effective February 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Daniel Hernandez, NIH Regulations Officer, Office of Management Assessment, NIH, Rockledge 1, 6705 Rockledge Drive, Suite 601, Room 601–T, Bethesda, MD 20817, MSC 7901, by email at *dhernandez@mail.nih.gov,* or by telephone at 301–435–3343 (not a toll-free number). For program information contact: Matthew Lockhart, NIH Division of Loan Repayment, by email *matthew.lockhart@nih.gov,* or telephone 866–849–4047. Information regarding the requirements, application deadline dates, and an on-line application for the NIH Loan Repayment Programs may be obtained from the NIH Loan Repayment Program website *https://www.lrp.nih.gov/.*

**SUPPLEMENTARY INFORMATION:**

### I. Background and Statutory Authority

The purpose of the NIH LRP programs is to recruit and retain highly qualified health professionals as biomedical and behavioral researchers. The programs offer educational loan repayment for participants who agree, by written contract, to engage in qualifying domestic non-profit supported research at a qualifying non-NIH institution, or as an NIH employee for a minimum of two years (or three years for the Intramural LRP's general research subcategory).

On December 13, 2016, Congress enacted the 21st Century Cures Act, Public Law (Pub. L.) 114–255, Section 2022 of which amended the Public Health Service (PHS) Act to authorize the consolidation of National Institutes of Health Loan Repayment Programs (LRPs) into the Intramural Loan Repayment Program and the Extramural Loan Repayment Program.

The legislation also provides the NIH Director with the authority to establish or eliminate one or more subcategories of the LRPs to reflect workforce or scientific needs related to biomedical research. Thus, this statute allows for up to four subcategories for the Intramural Loan Repayment Program (General, Acquired Immunodeficiency Syndrome (AIDS), Clinical for Researchers from Disadvantaged Backgrounds, and one additional subcategory) and up to six subcategories for the Extramural Loan

Repayment Program (Contraception & Infertility, Pediatric, Clinical, Health Disparities, Clinical for Researchers from Disadvantaged Backgrounds, and one additional subcategory).

Furthermore, the 21st Century Cures Act provides the NIH Director with direct authority to administer the NIH Loan Repayment Programs (formerly the duty of the Secretary, HHS).

Finally, the legislation authorizes NIH to raise its annual loan repayment amount to a maximum of $50,000, which reflects a change from the previous maximum annual loan repayment amount of $35,000.

The PHS Act, as amended, now contains sections 487A (Intramural loan repayment program; 42 U.S.C. 288–1) and 487B (Extramural loan repayment program; 42 U.S.C. 288–2), with the removal of previous sections 464z–5, 487C, 487E, and 487F by the 21st Century Cures Act. Sections 487A and 487B of the PHS Act authorize the NIH Director to enter into contracts with qualified health professionals under which such professionals agree to conduct research in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $50,000 of the principal and interest of the qualified educational loans of such professionals. In return for these loan repayments, applicants must agree to participate in qualifying research for an initial period of not less than two years (or a minimum of three years for the Intramural LRP's general research subcategory), as one of the following: (1) An NIH employee (for Intramural LRP), or (2) A health professional engaged in qualifying research supported by a domestic non-profit foundation, non-profit professional association, or other non-profit institution (*e.g.,* university), or a U.S. or other government agency (Federal, State or local).

HHS announced its intentions to initiate this rulemaking action in the notice of proposed rulemaking (NPRM) titled ''National Institutes of Health Loan Repayment Programs'' that it published in the **Federal Register** on March 8, 2022 (87 FR 12919–12923). The NPRM provided a sixty-day public comment period. The comment period ended May 9, 2022.

In the NPRM, we proposed updating the existing regulation for NIH LRPs codified at 42 CFR part 68, and titled ''National Institutes of Health Loan Repayment Programs,'' to reflect the changes in NIH LRPs that resulted from enactment of the 21st Century Cures Act.

Specifically, we proposed amending the authority citation by adding the United States Code (U.S.C.) citation 42 U.S.C. 216 and removing U.S.C. citations 42 U.S.C. 254o, 42 U.S. C288–3, 42 U.S.C.288–5, 42 U.S. C. 288–5a, 42 U.S.C. 288–6, and 42 U.S.C.285t–2.

We proposed amending § 68.1 by removing the references to sections 487C, 487E, 487F and 464z–5 of the Public Health Service Act (PHS Act), and references to U.S.C. citations 42 U.S.C. 288–3, 42 U.S.C. 288–5, 42 U.S.C. 288–5a, 42 U.S.C. 288–6, and 42 U.S.C. 285t–2; and by revising the last sentence of the introductory narrative to indicate that the NIH Loan Repayment Programs include two separate programs, the Intramural Loan Repayment Program (for NIH researchers) and the Extramural Loan Repayment Program (for non-NIH researchers).

Additionally, we proposed amending paragraphs (a) and (b) by revising them and their respective subparagraphs in their entirety to reflect that there are currently two NIH LRPs, the Intramural LRP with up to four subcategories and the Extramural LRP with up to six subcategories.

We proposed amending § 68.2 by removing the term ''Secretary,'' adding the term ''Research in Emerging Areas Critical to Human Health,'' and revising the term ''Nonprofit funding/support to read ''Nonprofit research funding/support.'' We further proposed amending § 68.2 by revising the definitions for ''Debt threshold,'' ''Director,'' ''Educational expenses,'' ''Extramural LRP,'' ''Intramural LRP,'' ''Loan repayment programs,'' ''Participant,'' ''Program eligibility date,'' ''Qualified Educational Loans and Interest/Debt,'' ''Reasonable educational and living expenses,'' ''Repayable debt,'' and ''Waiver.''

We proposed amending § 68.5 by revising paragraph (d) to state that for the Extramural LRP only, individuals who receive any salary support or participate in research that receives funding support from a for-profit institution or organization, or Federal Government employees working more than 20 hours per week are ineligible to participate.

We proposed amending § 68.6 by removing the word ''Secretary'' and adding in its place the words ''NIH Director.''

We further proposed amending § 68.7 by revising paragraph (d)(2)(iii) to state that for the minority health disparities subcategory, at least 50 percent of the contracts are required by statute to be for appropriately qualified health professionals who are members of a health disparity population.

We proposed amending § 68.8 by revising paragraph (a) to state that NIH may pay up to $50,000 per year of a participant's repayable debt rather than the previous $35,000 per year.

Additionally, we proposed amending § 68.12 by removing the word ''Secretary'' and adding the words ''NIH Director'' in its place.

## II. Summary of Public Comments

We received a total of four public comments in response to the NPRM. Two of the comments were duplicates. We read the duplicates and considered them, but because they were not directly relevant to this rulemaking, they are not discussed.

A third commenter indicated that she agreed with the rule. Additionally, the commenter noted she appreciated the amendment of the language to address the Research in Emerging Areas Critical to Human Health and Nonprofit research funding/support as a focus of the important workforce needed to carry out this work. The commenter suggested that the challenge for organizations like NIH and nonprofits is attracting top talent to compete with the private biomedical research field. Finally, the commenter stated the education required and the work that is needed to improve the health of disadvantaged communities emphasize the importance of federal loan forgiveness programs for graduates who want to give their time and experience to public service. The commenter did not suggest any changes to what was proposed in the NPRM.

A fourth commenter stated that she agreed with the proposed change of having the NIH LRPs consolidated into two programs. The commenter also agreed that the NIH Director should be able to administer the NIH LRPs. However, the commenter disagreed with changing the loan repayment amount from a maximum of $35,000 per year to a maximum of $50, 000 per year. The commenter stated that the maximum loan amount should be increased on a smaller scale to reduce government spending. NIH has no discretion with respect to the loan repayment amount being increased to a maximum of $50,000 per year, because that amount has been established in statute with the enactment of the 21st Century Cures Act, Public Law (Pub. L.) 114–255. Therefore, we did not consider or adopt the suggested change.

Consequently, we did not make any changes to what we proposed in the previous NPRM in response to the four public comments received. Thus, the changes being made by this final rule are the same as the changes proposed in the previous NPRM except for the additional changes made to correct the terms ''Extramural LRPs'' and

''Intramural LRPs'' in § 68.2, Definitions, to read ''Extramural LRP'' and ''Intramural LRP'', respectively. Each Program is a singular program with subcategories. Therefore, each term should be singular not plural. We made the changes necessary to correct this in the final rule.

We provide the following as public information.

**Regulatory Impact Analysis**

We examined the impacts of the final rule under Executive Order (E.O.) 12866, Regulatory Planning and Review; E.O. 13563, Improving Regulation and Regulatory Review; E.O. 13132, Federalism; 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**

E.O. 12866 and E.O. 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) for all significant regulatory actions. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). Based on our analysis, the rule does not constitute an economically significant regulatory action.

**Executive Order 13132**

E.O. 13132, Federalism, requires Federal agencies to consult with State and local government officials in the development of regulatory policies with federalism implications. We reviewed the rule as required under the order and determined that it does not have any federalism implications. This rule will not have effect on the States or on the distribution of power and responsibilities among the various levels of government.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. For the purpose of this analysis, small entities include small business concerns as defined by the Small Business Administration (SBA), usually businesses with fewer than 500 employees. Applicants who are eligible to apply for the loan repayment awards are individuals, not small entities. This rule will not create a significant impact on a significant number of small entities.

**Unfunded Mandates Reform Act of 1995**

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires Federal agencies 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 organizations, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation with base year of 1995) in any one year. The current inflation-adjusted statutory threshold for 2022 is approximately $165 million based on the Gross Domestic Product deflator. This rule will not result in a one-year expenditure that would meet or exceed that amount. Participation in the NIH loan repayment programs is voluntary and not mandated.

**Paperwork Reduction Act**

This rule does not contain any new information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). More specifically, § 68.6 is a reporting requirement, but the specifics of the burden are determined in the approved application forms used by the NIH Loan Repayment Programs and have been separately approved by OMB under OMB No. 0925–0361 (expires October 31, 2022). Additionally, §§ 68.3(c) and (e), 68.11(c), 68.14(c) and (d), and 68.16(a) are reporting requirements and/or recordkeeping requirements, but they also are covered under OMB No. 0925–0361.

**Federal Assistance Listings**

The Federal Assistance Listings numbered programs affected by this rule are:

93.220—NIH Intramural Loan Repayment Program

93.280—NIH Extramural Loan Repayment Program

**List of Subjects in 42 CFR Part 68**

Health professions, Loan programs—health, Medical research.

For reasons presented in the preamble, the Department of Health and Human Services amends 42 CFR part 68 as set forth below.

## PART 68—NATIONAL INSTITUTES OF HEALTH (NIH) LOAN REPAYMENT PROGRAMS (LRPs)

■ 1. The authority citation for part 68 is revised to read as follows:

**Authority:** 42 U.S.C. 216, 42 U.S.C. 288–1, 42 U.S.C. 288–2.

■ 2. Section 68.1 is revised to read as follows:

**§ 68.1 What are the scope and purpose of the NIH LRPs?**

The regulations of this part apply to the award of educational loan payments authorized by sections 487A and 487B of the Public Health Service Act, as amended (42 U.S.C. 288–1, 42 U.S.C. 288–2). The purpose of these programs is to address the need for biomedical and behavioral researchers by providing an economic incentive to appropriately qualified health professionals who are engaged in qualifying research supported by domestic nonprofit funding or as employees of NIH. The NIH Loan Repayment Programs include two separate programs, the Intramural Loan Repayment Program (for NIH researchers) and the Extramural Loan Repayment Program (for non-NIH researchers).

(a) The Intramural LRP includes subcategories that focus on:

(1) General research, including a program for Accreditation Council for Graduate Medical Education (ACGME) Fellows;

(2) Research on acquired immune deficiency syndrome;

(3) Clinical research conducted by appropriately qualified health professionals who are from disadvantaged backgrounds; and

(4) An area of emerging scientific or workforce need.

(b) The Extramural LRP includes subcategories that focus on:

(1) Contraception or infertility research;

(2) Pediatric research, including pediatric pharmacological research;

(3) Minority health disparities research;

(4) Clinical research;

(5) Clinical research conducted by health professionals from disadvantaged backgrounds; and

(6) Research in emerging areas critical to human health.

■ 3. Section 68.2 is amended by:

■ a. Revising the definitions for ''Debt threshold'', ''Director'', and ''Educational expense'';

■ b. Removing the definition of ''Extramural LRPs'' and adding the definition of ''Extramural LRP'' in its place;

■ c. Revising the definition of ''Individual from disadvantaged background'';
■ d. Removing the definition of ''Intramural LRPs'' and adding the definition ''Intramural LRP'' in its place;
■ e. Revising the definitions of ''Loan Repayment Programs (LRPs)'' and ''Loan Repayment Program contract'';
■ f. Removing the definition of ''Nonprofit funding/support'' and adding the definition ''Nonprofit research funding/support'' in its place;
■ g. Revising the definitions of ''Participant'', ''Program eligibility date'', ''Qualified Educational Loans and Interest/Debt'', ''Reasonable educational and living expenses'', and ''Repayable debt'';
■ h. Adding a definition for ''Research in emerging areas critical to human health'' in alphabetical order;
■ i. Removing the definition of ''Secretary''; and
■ j. Revising the definition of ''Waiver''.

The revisions and additions read as follows:

**§ 68.2 Definitions.**

* * * * *

*Debt threshold* means the minimum amount of qualified educational debt an individual must have, on their program eligibility date, in order to be eligible for LRP benefits, as established by the NIH Director.

*Director* means the Director of the National Institutes of Health (NIH) or designee.

*Educational expenses* pertain to costs associated with the pursuit of the health professional's undergraduate, graduate, and health professional school's education, including the tuition expenses and other educational expenses such as living expenses, fees, books, supplies, educational equipment and materials, and laboratory expenses.

*Extramural LRP* refers to the program for which health professionals, who are not NIH employees and have program-specified degrees and domestic nonprofit support, are eligible to apply. The Extramural LRP includes subcategories that focus on:

(1) Contraception or infertility research;

(2) Pediatric research, including pediatric pharmacological research;

(3) Minority health disparities research;

(4) Clinical research;

(5) Clinical research conducted by appropriately qualified health professionals who are from disadvantaged backgrounds; and

(6) Research in emerging areas critical to human health.

* * * * *

*Individual from disadvantaged background* means:

(1) Comes from an environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary of Health and Human Services (HHS) for use in HHS programs. The Secretary periodically publishes these income levels in the **Federal Register**.

* * * * *

*Intramural LRP* refers to the program for which applicants must be employed by the NIH. The Intramural LRP includes subcategories that focus on:

(1) General research, including a program for Accreditation Council for Graduate Medical Education (ACGME) Fellows;

(2) AIDS research;

(3) Clinical research conducted by appropriately qualified health professionals from disadvantaged backgrounds; and

(4) An area of emerging scientific or workforce need.

* * * * *

*Loan Repayment Programs (LRPs)* refers to the NIH Loan Repayment Programs, including those authorized by sections 487A and 487B of the Act, as amended.

*Loan Repayment Program contract* refers to the agreement signed by an applicant and the NIH Director (or an appointed designee). Under such an agreement, an Intramural LRP applicant agrees to conduct qualified research as an NIH employee, and an Extramural LRP applicant agrees to conduct qualified research supported by domestic nonprofit funding, in exchange for repayment of the applicant's qualified educational loan(s) for a prescribed period.

* * * * *

*Nonprofit research funding/support* means applicants must conduct qualifying research supported by a domestic nonprofit foundation, nonprofit professional association, or other nonprofit institution (*e.g.,* university), or a U.S. or other government agency (Federal, state, or local). A domestic foundation, professional association, or institution is considered to be nonprofit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501).

*Participant* means an individual whose application to any of the NIH LRPs has been approved and whose Program contract has been executed by the NIH Director or designee.

* * * * *

*Program eligibility date* means the date on which an individual's LRP contract is executed by the NIH Director or designee.

*Qualified Educational Loans and Interest/Debt* (see the definition of *educational expenses* in this section) as established by the NIH Director, include Government and commercial educational loans and interest for:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses incurred.

*Reasonable educational and living expenses* means those educational and living expenses that are equal to or less than the sum of the school's estimated standard student budget for educational and living expenses for the degree program and for the year(s) during which the participant was enrolled in school. If there is no standard budget available from the school, or if the participant requests repayment for educational and living expenses that exceed the standard student budget, reasonableness of educational and living expenses incurred must be substantiated by additional contemporaneous documentation, as determined by the Secretary of HHS.

*Repayable debt* means the proportion, as established by the NIH Director, of an individual's total qualified educational debt that can be repaid by an NIH LRP.

*Research in emerging areas critical to human health* refers to research designed to pursue major opportunities and gaps in biomedical research and expand research in emerging areas of human health. Emerging areas are considered new areas of biomedical and biobehavioral research where a critical mass of capability and expertise is still emerging across the biomedical and biobehavioral research community.

* * * * *

*Waiver* means a waiver of the service obligation granted by the NIH Director when compliance by the participant is impossible or would involve extreme hardship, or where enforcement with

respect to the individual would be unconscionable. (See the definition of *breach of contract* in this section.)

* * * * *

■ 4. Section 68.5 is amended by revising paragraph (d) to read as follows:

**§ 68.5 Who is ineligible to participate?**

* * * * *

(d) For Extramural LRP only: Individuals who receive any salary support or participate in research that receives funding support from a for-profit institution or organization, or Federal Government employees working more than 20 hours per week;

* * * * *

■ 5. Section 68.6 is revised to read as follows:

**§ 68.6 How do individuals apply to participate in the NIH LRPs?**

An application for participation in an NIH LRP shall be submitted to the NIH, which is responsible for the Program's administration, in such form and manner as the NIH Director prescribes.

■ 6. Section 68.7 is amended by revising paragraph (d)(2)(iii) to read as follows:

**§ 68.7 How are applicants selected to participate in the NIH LRPs?**

* * * * *

(d) * * *

(2) * * *

(iii) For the Health Disparities Research subcategory, at least 50 percent of the contracts are required by statute to be for appropriately qualified health professionals who are members of a health disparity population.

■ 7. Section 68.8 is amended by revising paragraph (a) to read as follows:

**§ 68.8 What do the NIH LRPs provide to participants?**

(a) *Loan repayments.* For each year of the applicable service period the individual agrees to serve, the NIH may pay up to $50,000 per year of a participant's repayable debt.

* * * * *

■ 8. Section 68.12 is revised to read as follows:

**§ 68.12 How does an individual receive loan repayments beyond the initial applicable contract period?**

An individual may apply for a competitive extension contract for at least a one-year period if the individual is engaged in qualifying research and satisfies the eligibility requirements specified under §§ 68.3 and 68.4 for the extension period and has remaining repayable debt as established by the NIH Director.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2023–01240 Filed 1–24–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 48 CFR Parts 802, 804, 811, 812, 824, 839, and 852

**RIN 2900–AQ41**

## VA Acquisition Regulation: Acquisition of Information Technology; and Other Contracts for Goods and Services Involving Information, VA Sensitive Information, and Information Security; and Liquidated Damages Requirements for Data Breach

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing a final rule amending the VA Acquisition Regulation (VAAR). This rulemaking revises the VAAR by adding a part covering Acquisition of Information Technology and revising coverage concerning Other Contracts for Goods and Services involving mandatory information, privacy, and security requirements to include policy concerning VA sensitive personal information, information security, and liquidated damages requirements for data breach in the following parts: Administrative and Information Matters; Describing Agency Needs; Protection of Privacy and Freedom of Information; as well as Acquisition of Commercial Products and Commercial Services. It also revises affected parts concerning Definitions of Words and Terms, and Solicitation Provisions and Contract Clauses.

**DATES:** Effective February 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Glacia A. Holbert, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 810 Vermont Avenue NW, Washington, DC 20420, (202) 697–3614. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

### Background

VA published a proposed rule in the **Federal Register** at 86 FR 64132 on November 17, 2021, to amend the VAAR to implement and supplement the Federal Acquisition Regulation (FAR). VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The public comment period closed on January 18, 2022. VA received ten comments from two respondents.

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

The VAAR has been revised to add new policy or regulatory requirements, to update existing policy, and to remove any redundant guidance where it may exist in affected parts, and to place guidance that is applicable only to VA's internal operating processes or procedures in the VA Acquisition Manual (VAAM).

This rule adopts as a final rule the proposed rule published in the **Federal Register** on November 17, 2021, except for revisions to respond to the public comments as discussed below, and other technical non-substantive changes to update terminology in accordance with FAR final rules and other minor administrative amendments as shown below.

### Discussion and Analysis of Public Comments

The first respondent references two VA information technology and security publications and observed that as the field of technology grows, fraudulent activity rises and notes that the proposed rule provides a layer of uniform security. The respondent goes on to note that liquidated damages are instrumental.

VA appreciates the comment on the proposed rule. One of the VA Acquisition Regulation rewrite project objectives is to incorporate any new agency-specific regulations or policies to implement statutory and other requirements, to ensure VA can effectively execute its mission to serve Veterans. VA believes the regulation appropriately implements specific liquidated damages statutory requirements in the event of a data breach. The comments do not require the VA to make any revisions to the proposed rule. Therefore, VA is taking no action to revise the proposed rule based on these comments.

Another respondent recommends revising the proposed notification and reporting of security and privacy incidents from ''within 1 hour of discovery to the contracting officer'' to ''notification of within 24 hours of identification'' as being a more reasonable timeline.

VA appreciates the comment and has considered the respondent's suggestion. VA is required to ensure immediate notification in the event of discovery so that action can be initiated. VA has determined that waiting until 24 hours vs. the originally specified ''within 1 hour of discovery'' as set forth in the rule would potentially put Veteran's data at further risk. The one-hour notification requirement is consistent with existing VA policy that all contractors must currently comply with. In order to ensure VA continues to protect Veteran's data, the current reporting requirement is necessary. Therefore, VA is taking no action to revise the proposed rule based on these comments.

The same respondent requests that VA elaborate on the liquidated damages that are proposed for contracts that will be subject to the clause. The respondent asked, ''How will such damages be assessed and enforced and is there potential for mitigation of any such damages?''

As stated in the preamble of the proposed rule, the VA Secretary is required by statute (38 U.S.C. 5725(a)–(c)) to ensure that if a contract is entered into for the performance of any Department function that requires access to sensitive personal information that VA shall include, as a condition of the contract, that a contractor shall not, directly or through an affiliate of the contractor, disclose such information to any other person unless the disclosure is lawful and is expressly permitted under the contract. This statute also requires that each such contract be subject to liquidated damages to be paid by the contractor to VA in the event of a data breach of any sensitive personal information processed or maintained by the contractor or any subcontractor under the contract. The liquidated damages collected will be used for the purpose of VA providing credit protection services. The clause that sets forth the requirement is found in the proposed rule at section 852.211–76, Liquidated Damages—Reimbursement for Data Breach Costs. The clause states that if the contractor or any of its agents fails to protect VA sensitive personal information or otherwise engages in conduct which results in a data breach, the contractor shall, in place of actual damages, pay to the Government liquidated damages of [Contracting Officer inserts amount] per affected individual in order to cover costs related to the notification, data breach analysis and credit monitoring. The amount to be inserted by the contracting officer will be set forth in VA internal policy as the amount may change each year and would be inserted in the clause prior to contract award so contractors subject to the clause are aware. As stated in the clause, in the event the contractor provides payment of actual damages in an amount determined to be adequate by the contracting officer, the contracting officer may forgo collection of liquidated damages. Each situation will be handled by the contracting officer on a case-by-case basis under the terms and conditions of the clause as set forth in each contract.

The comments do not require VA to make any revisions to the proposed rule. Therefore, VA is taking no action to revise the rule based on these comments.

The respondent asks whether a contractor may defer to their own internal annual training programs already in place versus using VA furnished content.

VA has considered the respondent's request to permit a contractor to use their own training in lieu of VA-specific training. However, to comply with Federal policy and requirements, VA implementing directives and policy require VA organizational users (to include contractors, employees, subcontractors, and associates) and nonorganizational users to adhere to prescribed VA Privacy and Information Security Awareness and Rules of Behavior training. This training is the same training VA employees are required to take. Therefore, all contractors, contractor employees, subcontractors and associates are required to take the VA specific training and submit certificates when required by the contract where access to VA information, information systems, and VA sensitive information is required as set forth in the applicable clause(s) that are inserted in solicitations and contracts. The training is specific to VA requirements in order to protect VA information, VA sensitive information and VA information systems.

Therefore, VA is making no changes to the proposed rule as a result of this comment.

The respondent also requests VA provide more specific requirements for background screening.

Separately, specific requirements for background screening are set forth as applicable in each solicitation and contract. As this question is outside the scope of this proposed rule, VA is making no changes to the rule as a result of this comment.

The respondent asks if the definition of the initiation of a Business Associate Agreement (BAA) criteria differ from the HHS language?

To address the inquiry regarding the definition, VA refers the respondent to the definition of ''Business Associate Agreement (BAA)'' as set forth at VAAR 802.101. A Business Associate Agreement (BAA) means the agreement, as dictated by the Health Insurance Portability and Accountability Act of 1996 (HIAPA) Privacy Rule (45 CFR part 160), between the Veterans Health Administration (VHA) and a business associate, which must be entered into in addition to the underlying contract for services and before any release of protected health information (PHI) can be made to the business associate, in order for the business associate to perform certain functions or activities on behalf of VHA. VA applies the criteria as set forth in the HIPAA Privacy Rule.

In VAAR section 824.103–70, Protection of privacy—general requirements and procedures related to Business Associate Agreements, VA policy states that to ensure compliance with unique responsibilities to protect PHI, contractors performing under VA contracts subject to unique PHI and HIPAA shall comply with requirements and the clause prescribed at section 804.1903, 852.204–71, Information and Information Systems Security.

The respondent also inquires whether VA will require BAAs to be executed in exclusive support of this contract and held separate from the support of other organizational business?

To address the inquiry regarding the definition, VA refers the respondent to the definition of ''Business Associate Agreement (BAA)'' as set forth at VAAR section 802.101. A BAA means the agreement, as dictated by the HIPAA Privacy Rule (45 CFR part 160), between VHA and a business associate, which must be entered into in addition to the underlying contract for services and before any release of protected health information (PHI) can be made to the business associate, in order for the business associate to perform certain functions or activities on behalf of VHA. VA applies the criteria as set forth in the HIPAA Privacy Rule.

In VAAR section 824.103–70, Protection of privacy—general requirements and procedures related to Business Associate Agreements, VA policy states that to ensure compliance with unique responsibilities to protect protected health information PHI, contractors performing under VA contracts subject to unique PHI and HIPAA shall comply with requirements and the clause prescribed at section 804.1903, 852.204–71, Information and Information Systems Security.

To address the respondent's second inquiry whether VA will require BAAs to be executed in exclusive support of a contract, as stated at VAAR section 824.103–70 of the rule, paragraph (a), which describes HIPAA Business Associate Agreement requirements, providing that, under the HIPAA Privacy and Security Rules (see 45 CFR part 160), a covered entity (VHA) must have a satisfactory assurance that its protected health information will be safeguarded from misuse. To do so, a covered entity enters into a BAA with a contractor (now the business associate), which obligates the business associate to only use the covered entity's PHI for the purposes for which it was engaged, provide the same protections and safeguards as is required from the covered entity, and agree to the same disclosure restrictions to PHI that is required of the covered entity. This specific VA requirement is in concert with the specified HIPAA Privacy Rule (see 45 CFR part 160).

The public is also invited to see VA Directive 6066, Protected Health Information (PHI) and Business Associate Agreements Management, as referenced at paragraph (c). Contractors will be required to execute BAAs as required by the contract. Contractors should contact the cognizant contracting officer and contracting officer's representative, as required, for questions regarding BAAs which may have previously been executed and filed with the VHA (the only administration of the Department of Veterans Affairs that is a HIPAA covered entity under the HIPAA Privacy Rule).

The comments do not require the VA to make any revisions to the proposed rule. Therefore, VA is taking no action to revise the rule based on these comments.

The respondent requests that VA elaborate on the details of what would be expected to be included in the Information Technology Security Plan.

VA has considered the respondent's comment and is slightly editing the clause at 852.239–70, Security Requirements for Information Technology Resources, to ensure the requirement for a plan is understood by revising the title of the plan and its use, including in the clause at 852.239–73, Information System Hosting, Operation, Maintenance, or Use, both prescribed in VAAR part 839. The title of the required plan referenced in the clause at 852.239–70, Security Requirements for Information Technology Resources, is revised from ''Information Technology Security Plan'' to ''Information System Security Plan'' to better reflect the underlying content submittal requirements. In the clause at 852.239–70, paragraph (c) states that, generally, the plan shall describe the processes and procedures that the Contractor will follow to ensure appropriate security of information technology resources developed, processed, or used under this contract. It should include implementation status, responsible entities, resources, and estimated completion dates. An ''Information system security plan'' means a formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements. Information system security plans may also include, but are not limited to, a compiled list of system characteristics or qualities required for system registration, and key security-related documents such as a risk assessment, Privacy Impact Assessment (PIA), system interconnection agreements, contingency plan, security configurations, configuration management plan, and incident response plan. The plan shall address the specific contract requirements regarding information system security and related support or services included in the contract, to include the performance work statement (PWS) or statement of work (SOW). The plan shall also comply with applicable Federal Laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Modernization Act (FISMA) of 2014 and the E-Government Act of 2002. The plan shall meet information system security plan requirements (describing the security controls in place or planned for meeting those requirements) in accordance with Federal and VA policies and procedures, and as amended during the term of a contract, and include, but are not limited to the following:

(1) Office of Management and Budget (OMB) Circular A–130, Managing Information as a Strategic Resource;

(2) National Institute of Standards and Technology (NIST) Guidelines; and

(3) VA Directive 6500, VA Cybersecurity Program, and the directives and handbooks in the VA 6500 series related to VA information (including VA sensitive information and sensitive personal information and information systems security and privacy), as well as those set forth in the contract specifications, statement of work, or performance work statement. These include, but are not limited to, VA Handbook 6500.6, Contract Security; and VA Directive and Handbook 0710, Personnel Security and Suitability Program, which establishes VA's procedures, responsibilities, and processes for complying with current Federal law, Executive orders, policies, regulations, standards, and guidance for protecting VA information, information systems (see 802.101) security and privacy, and adhering to personnel security requirements when accessing VA information or information systems.

VA has updated the VAAR text prescribing the clause, and the clause at 852.239–70, Security Requirements for Information Technology Resources.

The respondent asks VA with respect to the clause at 852.239–73, Information System Hosting, Operation, Maintenance, or Use, to provide more details on the VA systems control procedures as well as what might be expected to be included in the PIA.

VA has considered the respondent's request to further elaborate on the requirement for a PIA. In order to provide clarity to the public, VA is incorporating non-substantive technical amendments to the clauses at 852.239–70, Security Requirements for Information Technology Resources, and 852.239–73, Information System Hosting, Operation, Maintenance, or Use, to clarify that when VA is referring to a ''security plan'' the requirement is for an ''information system security plan.'' VA has made the corresponding revisions to the clauses and applicable VAAR text where that term is included to clarify this. VA is also clarifying for the public via the clause at 852.239–70, paragraph (e), Security accreditation, that VA is referring to non-VA owned systems.

In the clause at 852.239–73, Information System Hosting, Operation, Maintenance, or Use, VA is also clarifying in paragraph (c), Collecting, processing, transmitting, and storing of VA sensitive information, that VA is referring to a broader category of VA sensitive information of which Personally Identifiable Information (PII) is a subset and has revised the clause at 852.239–73, Information System Hosting, Operation, Maintenance, or Use, to reflect ''VA sensitive information'' in lieu of ''PII'' in the paragraph to ensure clarity.

And, in paragraph (g), Disposal or return of electronic storage media on non-VA leased or non-VA owned IT equipment, VA has added a key specific reference to the National Institute of Standards (NIST) 800–88, Rev. 1, ''Guidelines for Media Sanitization,'' and VA Directive 6500, VA Cybersecurity Program, paragraph 2(b)(5), Media Sanitization, to provide the public more information on what electronic media sanitization requirements apply.

These technical revisions of the rule align the two clauses and ensures the public is aware that PII is considered a subset for VA sensitive information and the requirements for protecting and safeguarding the same are clearly identified and understood.

The respondent asks a final question with respect to the proposed clause at 852.239–74, Security Controls Compliance Testing, and specifically if VA can provide more details on the items to be included in a security control assessment. The respondent noted that they have concerns that it may be difficult to complete the assessment depending on the timing of any advance notification.

VA refers the public to more information on security control assessments that can be found in NIST SP 800–53A Rev. 5. The comments do not require the VA to make any revisions to the rule on the basis of the specific comment. However, VA is making one minor revision to the clause in the first sentence to provide clarity. The sentence is being revised from. . . . ''VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security controls and privacy practices implemented by the Contractor . . .'' to ''VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security and privacy controls implemented by the Contractor . . .''.

**Summary of Revisions to the Rule**

Based on the review of public comments and to provide clarity as discussed above under the analysis of public comments, VA is summarizing the technical revisions to address the comments as follows:

1. At section 839.106–70, the heading of the section is changed to ''Information system security and privacy contract clauses,'' in lieu of ''Information technology security and privacy clauses.'' And in paragraph (a), the heading for the clause at 852.239–71 is revised from ''Information Technology Security Plan and Accreditation'' to ''Information System Security Plan and Accreditation.''

2. In the clause at 852.239–70, Security Requirements for Information Technology Resources, the following clarifying edits were made:

a. In paragraph (a), the definition for ''Security plan'' is revised slightly to now read ''Information system security plan'' and an unnecessary reference to ''or an information security program and'' is removed for clarity.

b. In paragraph (b), in the first sentence the phrase ''information technology security'' is revised to read ''information system security . . .''.

c. In paragraph (c), the heading of the paragraph is revised to read ''Information system security plan'' in lieu of ''Information technology security plan.'' Other conforming edits are made to revise the use from ''security plan'' to read ''information system security plan'', and to remove the term ''technology'' where not appropriate. The paragraph is also updated in the fifth sentence to remove the phrase ''or qualities required for system registration'' as unnecessary.

d. In paragraph (d), the required number of calendar days for submittal of an Information System Security Plan is increased from ''30 days after contract award'' to read ''90 days after contract award.'' This provides more time for contractors to accomplish the required submittal.

e. In paragraph (e), dealing with security accreditation, the phrase ''information technology security accreditation'' is revised to read ''information system security accreditation'' in the first sentence. It is also clarified by adding the phrase ''for non-VA owned systems'' to make this clear. And the second to last and the last sentence are edited to improve the flow of information.

f. In paragraph (f), the referenced ''IT Security Plan'' is revised to reflect the updated usage of ''Information System Security Plan'' as contained within the rest of the clause.

g. In paragraph (j), dealing with Government access, the phrase ''information technology inspection'' is revised to reflect ''information system inspection'' to reflect the more accurate terminology. And the word ''technology'' is removed in the last sentence after the word ''information'' so that it now reads ''. . . information systems operated on behalf of VA), . . .''.

3. In the clause at 852.239–73, Information System Hosting, Operation, Maintenance, or Use, the following editorial revisions are made for clarity and to incorporate the appropriate use of the term ''information system security plan'' in lieu of ''security plan.''

a. In paragraph (a), the definition for ''Security plan'' is revised slightly to now read ''Information system security plan'' and an unnecessary reference to ''or an information security program and'' is removed for clarity.

b. In paragraph (c), dealing with collecting, processing, transmitting, and storing of PII, the heading is revised to reflect ''VA sensitive information'' in lieu of PII as the more appropriate term to use that would encompass PII. The heading for this paragraph would now read ''Collecting, processing, transmitting, and storing of VA sensitive information.'' An unnecessary phrase ''as determined by the VA Privacy Service'' is removed. The phrase ''Privacy Impact Assessment'' is deleted, and the phrase ''Information System Security Plan'' is inserted in its place as the more accurate term. And the requirement that a Plan of Action and Milestones (POA&M) must be submitted and approved is expanded from just prior to ''collection of PII'' to prior to ''collecting, processing, transmitting, and storing of VA sensitive information'' to comply with requirements already described elsewhere in the rule.

c. In paragraph (g), concerning disposal or return of electronic storage media on non-VA leased or non-VA owned IT equipment, VA is adding the required specific references to the existing language as follows: ''NIST 800–88, Rev. 1, ''Guidelines for Media Sanitization,'' and VA Directive 6500, VA Cybersecurity Program, paragraph 2(b)(5), Media Sanitization . . .''.

4. In the clause at 852.239–74, Security Controls Compliance Testing, VA is making a minor edit to revise the phrase ''all of the security controls and privacy practices'' to ''all of the security and privacy controls'' in the first sentence.

**Technical Non-Substantive Changes to the Rule**

This rule makes 12 non-substantive changes to the rule to provide clarity, eliminate confusion, and to ensure compliance with the FAR. Specifically, VA is revising the term ''commercial items'' to reflect either ''commercial products and commercial services'' or ''commercial products or commercial services'' in alignment with FAR final rule, Federal Acquisition Regulation: Revision of Definition of ''Commercial Item'', RIN 9000–AN76, effective December 6, 2021. There are 14 mentions of the legacy term ''commercial items'' that were identified in this rule's amendatory language in the following VAAR parts, subparts, and sections, to include headings as well as the underlying text. The legacy term ''commercial items'' was also referenced in two FAR clause references where the FAR heading has also been revised because of the referenced FAR final rule. The respective VAAR part 812 table of contents also has the legacy term ''Commercial Item'' and will also be updated with this final rule.

Accordingly, VA is revising the final rule to reflect the updated terminology in accordance with the FAR final rule

and as reflected in the amendatory text as follows (items number 1–9 below):

1. At section 804.1902, Applicability, VA is revising the phrase in the section from ''acquisition of commercial items'' to ''acquisition of commercial products or commercial services.''

2. At section 811.503–70, Contract clause, paragraph (b), VA is revising the phrase ''in commercial items'' to read ''for commercial products or commercial services . . .''.

3. At section 811.503–70, Contract clause, paragraph (c), VA is revising the phrase ''commercial items'' to read ''commercial products or commercial services . . .''.

4. Under part 812, Acquisition of Commercial Items, VA is revising the heading from ''Acquisition of Commercial Items'' to ''Acquisition of Commercial Products and Commercial Services''.

5. At subpart 812.3, VA is revising the heading from ''Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items'' to read ''Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services.''

6. At section 812.301, VA is revising the heading from ''Solicitation provisions and contract clauses for the acquisition of commercial items'' to read ''Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.''

7. Under section 812.301, at paragraphs (f)(1) and (2), VA is revising the heading to the FAR provision at 52.212–1 to read ''Instruction to Offerors—Commercial Products and Commercial Services,'' and the heading to the FAR provision at 52.212–2 to read ''Evaluation—Commercial Products and Commercial Services.''

8. At section 852.211–76, Liquidated Damages—Reimbursement for Data Breach Costs, the following revisions are made:

a. In the Alternate I paragraph, the phrase, ''commercial items'' is revised to read ''commercial products or commercial services,'' and in paragraph (e) under Alternate I, the referenced heading for the FAR clause at 52.212–4 is revised to read ''Contract Terms and Conditions—Commercial Products and Commercial Services.''

b. In the Alternate II paragraph, the phrase, ''commercial items'' is revised to read ''commercial products or commercial services,'' and in paragraph (e) under Alternate II, the referenced heading for the FAR clause at 52.212–4 is revised to read ''Contract Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).''

**Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Paperwork Reduction Act**

This final rule includes provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval, including all comments received on the proposed information collections and any changes made in response to comments. OMB has reviewed and assigned four new OMB Control Numbers, which are detailed below. In accordance with 5 CFR part 1320, the new OMB control numbers and the information collections are not approved at this time. OMB has up to 30 days to approve these information collections after the final rule publishes.

- OMB Control Number 2900–0895 for section 839.106–70, Information security and privacy clauses, and the VAAR clauses at 852.239–70, Security Requirements for Information Technology Resources, 852.239–72, Information System Design and Development, and 852.239–73, Information System Hosting, Operation, Maintenance or Use.
- OMB Control Number 2900–0900 for section 804.1970, Information security policy—contractor general responsibilities, and the VAAR clause at 852.204–71, Information and Information System Security.
- OMB Control Number 2900–0901 for section 811.503–70, Contract clause, and the VAAR clause at 852.211–76, Liquidated Damages—Reimbursement for Data Breach Costs.
- OMB Control Number 2900–0902 for section 812.301(f), Solicitation provisions and contract clauses for the acquisition of commercial products or commercial services, and the VAAR clauses at 852.212–71, Gray Market and Counterfeit Items, and 852.212–72, Gray Market and Counterfeit Items—Information Technology Maintenance Allowing Other-than-New Parts.

If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is based on the information set forth in this section. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

This rulemaking does not change VA's policy regarding small businesses and does not have a significant economic impact to individual businesses. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to provide needed guidance to ensure VA's contractors properly protect and safeguard VA sensitive information, which includes Veteran's sensitive personal information. This rulemaking adds a new VAAR part concerning Acquisition of Information Technology that codifies information collection burdens. VA's requirement to collect the information is the result of existing requirements to ensure compliance across the Federal government and specifically when VA contractors, subcontractors, business associates and their employees require access to VA information (including VA sensitive information) or information systems. VA is merely adding existing and current regulatory requirements to the VAAR and placing guidance that is applicable only to VA's internal operation processes or procedures into a VA Acquisition Manual. VA estimates no substantial cost impact to individual businesses will result from these rule updates already required to be considered by both large and small businesses to receive an award from VA or another Federal agency. There are

costs associated with this rulemaking pertaining to the codification of an information collection request in order to comply with VA's responsibilities under the Federal Information Security Modernization Act of 2014. Each agency of the Federal Government must provide security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. By statute, VA is required to ensure that its contractors, subcontractors, business associates, and their employees operating under contracts at VA shall be subject to the same Federal laws, regulations, policies or procedures as VA and VA personnel. While this requirement adds some burden in annual costs and hours to firms already awarded and performing contracts at VA, the overall cost is considered *de minimis,* for either large or small contractors, in relation to the potential impact and harm to Veterans and VA information and information systems should a contractor not comply. Properly setting forth the requirements will provide clarity to the public and ensure appropriate safeguards are in place to ensure protection of VA's information (in particular VA sensitive personal information) and information systems. In total, this rulemaking does not change VA's policy regarding small businesses, does not have a substantial economic impact to individual businesses, and does not significantly increase or decrease costs small business were already required to bear when performing contracts which required the access, maintenance, process, or utilization of VA sensitive information or information systems.

**Unfunded Mandates**

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

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**List of Subjects**

*48 CFR Parts 802, 804, 811, and 812*

Government procurement.

*48 CFR Part 824*

Freedom of information, Government procurement, Privacy.

*48 CFR Part 839*

Computer technology, Government procurement.

*48 CFR Part 852*

Government procurement, Reporting and recordkeeping requirements.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 19, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Consuela Benjamin,**

*Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA amends 48 CFR chapter 8 as follows:

## PART 802—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for part 802 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 802.1—Definitions

■ 2. Section 802.101 is amended by adding definitions for ''Business associate'', ''Business Associate Agreement'', ''Gray market items'', ''Information system'', ''Information technology'', ''Information technology-related contracts'', ''Privacy officer'', ''Security plan'', ''Sensitive personal information'', ''VA Information Security Rules of Behavior for Organizational Users/VA National Rules of Behavior'', and ''VA sensitive information'' in alphabetical order to read as follows:

**802.101 Definitions.**

* * * * *

*Business associate* (or *associate*) means an entity, including an individual (other than a member of the workforce of a covered entity), company, organization, or another covered entity, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191) Privacy Rule (45 CFR part 160), that performs or assists in the performance of a function or activity on behalf of the Veterans Health Administration (VHA) that involves the creating, receiving, maintaining, transmitting of, or having access to, protected health information (PHI), or that provides to or for VHA, certain services as specified in the HIPAA Privacy Rule that involve the disclosure of PHI to a contractor by VHA. The term also includes a subcontractor of a business associate that creates, receives, maintains, or transmits PHI or that stores, generates, accesses, exchanges, processes, or utilizes such PHI on behalf of the business associate.

*Business Associate Agreement (BAA)* means the agreement, as dictated by the HIPAA Privacy Rule (45 CFR part 160), between VHA and a business associate, which must be entered into in addition to the underlying contract for services and before any release of PHI can be made to the business associate, in order for the business associate to perform certain functions or activities on behalf of VHA.

* * * * *

*Gray market items* means original equipment manufacturer goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

* * * * *

*Information system* means, pursuant to 38 U.S.C. 5727, a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information whether automated or manual.

*Information technology* (*see* FAR 2.101) also means Information and Communication Technology (ICT).

*Information technology-related contracts* means those contracts which include services (including support services) and related resources for information technology as defined in this section.

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*Privacy officer* means the VA official with responsibility for implementing and oversight of privacy related policies and practices that impact a given VA acquisition.

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*Security plan* means a formal document that provides an overview of the security requirements for an information system or an information security program and describes the security controls in place or planned for meeting those requirements.

*Sensitive personal information* means, with respect to an individual, any information about the individual maintained by VA, including but not limited to the following:

(1) Education, financial transactions, medical history, and criminal or employment history.

(2) Information that can be used to distinguish or trace the individual's identity, including but not limited to name, Social Security Number, date and place of birth, mother's maiden name, or biometric records.

* * * * *

*VA Information Security Rules of Behavior for Organizational Users/VA National Rules of Behavior* means a set of VA rules that describes the responsibilities and expected behavior of users of VA information or information systems.

* * * * *

*VA sensitive information* means all VA data, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the information and includes sensitive personal information. The term includes information where improper use or disclosure could adversely affect the ability of VA to accomplish its mission, proprietary information, records about individuals requiring protection under various confidentiality provisions such as the Privacy Act and the HIPAA Privacy Rule, and information that can be withheld under the Freedom of Information Act. Examples of VA sensitive information include the following: individually-identifiable medical, benefits, and personnel information; financial, budgetary, research, quality assurance, confidential commercial, critical infrastructure, investigatory, and law enforcement information; information that is confidential and privileged in litigation such as information protected by the deliberative process privilege, attorney work-product privilege, and the attorney-client privilege; and other information which, if released, could result in violation of law or harm or unfairness to any individual or group, or could adversely affect the national interest or the conduct of Federal programs.

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## PART 804—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. The authority citation for part 804 is revised to read as follows:

**Authority:** 38 U.S.C. 5723–5724, 5725(a)–(c); 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

■ 4. Subpart 804.19 is added to read as follows:

**Subpart 804.19—Basic Safeguarding of Covered Contractor Information Systems**

Sec.
804.1900–70 Scope of this subpart.
804.1902 Applicability.
804.1970 Information security policy—contractor general responsibilities.
804.1903 Contract clause.

## Subpart 804.19—Basic Safeguarding of Covered Contractor Information Systems

### 804.1900–70 Scope of this subpart.

This subpart prescribes policies and procedures for information security and protection of VA information, information systems, and VA sensitive information, including sensitive personal information.

### 804.1902 Applicability.

This subpart applies to all VA acquisitions, including acquisitions of commercial products or commercial services other than commercially available off-the-shelf items, when a contractor's information system may contain VA information.

### 804.1970 Information security policy—contractor general responsibilities.

Contractors, subcontractors, business associates, and their employees who are users of VA information or information systems, or have access to VA information and VA sensitive information shall—

(a) Comply with all VA information security and privacy program policies, procedures, practices, and related contract requirements, specifications, and clauses, this includes complying with VA privacy and confidentiality laws and implementing VA and Veterans Health Administration (VHA) regulations (*see* 38 U.S.C. 5701, 5705, 5721–5728, and 7332; 38 CFR 1.460 through 1.496, 1.500 through 1.527, and 17.500 through 17.511), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191), and the Privacy Act of 1974 (as amended) (5 U.S.C. 522a);

(b) Complete VA security awareness training on an annual basis;

(c) Complete VHA's Privacy and HIPAA Training on an annual basis when access to protected health information (PHI) is required;

(d) Report all actual or suspected security/privacy incidents and report the information to the contracting officer and contracting officer's representative (COR), as identified in the contract or as directed in the contract, within one hour of discovery or suspicion;

(e) Comply with VA policy as it relates to personnel security and suitability program requirements for background screening of both employees and non-employees who have access to VA information systems and data;

(f) Comply with directions that may be issued by the contracting officer or COR, or from the VA Assistant Secretary for Information and Technology or a designated representative through the contracting officer or COR, directing specific activities when a security/privacy incident occurs;

(g) Sign an acknowledgment that they have read, understand, and agree to abide by the VA Information Security Rules of Behavior (VA National Rules of Behavior) as required by 38 U.S.C. 5723, FAR 39.105, and the clause at 852.204–71, Information and Information Systems Security, on an annual basis. The VA Information Security Rules of Behavior describe the responsibilities and expected behavior of contractors, subcontractors, business associates, and their employees who are users of VA information or information systems, information assets and resources, or have access to VA information;

(h) Maintain records and compliance reports regarding HIPAA Security and Privacy Rules (see 45 CFR part 160) compliance in order to provide such information to VA upon request to ascertain whether the business associate is complying with all applicable provisions under both rules' regulatory requirements; and

(i) Flow down requirements in all subcontracts and Business Associate Agreements (BAAs), at any level, as provided in the clause at 852.204–71, Information and Information Systems Security.

### 804.1903 Contract clause.

When the clause at FAR 52.204–21, Basic Safeguarding of Covered Contractor Information Systems is required to be included in accordance with FAR 4.1903, the contracting officer shall insert the clause at 852.204–71, Information and Information Systems Security.

## PART 811—DESCRIBING AGENCY NEEDS

■ 5. The authority citation for part 811 is revised to read as follows:

**Authority:** 38 U.S.C. 5723–5724, 5725(a)–(c); 40 U.S.C. 121(c); 41 U.S.C. 1303, 1702; and 48 CFR 1.301 through 1.304.

■ 6. Subpart 811.5 is added to read as follows:

**Subpart 811.5—Liquidated Damages**

Sec.
811.500 Scope.
811.501–70 Policy—statutory requirement.
811.503–70 Contract clause.

## Subpart 811.5—Liquidated Damages

### 811.500 Scope.

This subpart prescribes policies and procedures for using a liquidated damages clause in solicitations and contracts that involve VA sensitive personal information. This also pertains to any solicitations and contracts involving VA sensitive personal information issued by another agency for or on behalf of VA through an interagency acquisition in accordance with FAR subpart 17.5 and subpart 817.5.

### 811.501–70 Policy—statutory requirement.

(a) Contracting officers are required to include a liquidated damages clause in contracts for the performance of any Department function which requires access to VA sensitive personal information (*see* the definition in 802.101), in accordance with 38 U.S.C. 5725(b). The liquidated damages are to be paid by the contractor to the Department of Veterans Affairs in the event of a data breach involving sensitive personal information maintained, processed, or utilized by contractors or any subcontractors.

(b) The purpose of the liquidated damages to be paid for by the contractor in the event of a data breach of personal sensitive information is for VA to provide credit protection services to affected individuals pursuant to 38 U.S.C. 5724(a)–(b).

### 811.503–70 Contract clause.

(a) Insert the clause at 852.211–76, Liquidated Damages—Reimbursement for Data Breach Costs, in all solicitations, contracts, or orders, where VA requires access to sensitive personal information for the performance of a Department function where—

(1) Sensitive personal information (*see* the definition in 802.101) will be created, received, maintained, or transmitted, or that will be stored, generated, accessed, or exchanged such as protected health information (PHI) or utilized by a contractor, subcontractor, business associate, or an employee of one of these entities; or,

(2) When VA information systems will be designed or developed at non-VA facilities where such sensitive personal information is required to be created, received, maintained, or transmitted, or that will be stored, generated, accessed, exchanged, processed, or utilized.

(b) Insert the clause at 852.211–76 with its Alternate I in all solicitations, contracts, or orders, for commercial products or commercial services acquisitions awarded under the procedures of FAR part 8 or 12.

(c) Insert the clause at 852.211–76 with its Alternate II, in all solicitations, contracts, or orders, in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial products or commercial services awarded under the procedures of FAR part 13 (*see* FAR 13.302–5(d)(1) and the clause at FAR 52.213–4).

# PART 812—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 7. The authority citation for part 812 continues to read as follows:

**Authority:** 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301 through 1.304.

■ 8. The heading for part 812 is revised to read as set forth above.

■ 9. Subpart 812.3 is revised to read as follows:

## Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

### 812.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f)(1) Contracting officers shall insert the clause at 852.212–71, Gray Market and Counterfeit Items, in solicitations and contracts for new medical supplies, new medical equipment, new information technology equipment, and maintenance of medical or information technology equipment that includes replacement parts if used, refurbished, or remanufactured parts are unacceptable, when the associated solicitation includes FAR 52.212–1, Instruction to Offerors—Commercial Products and Commercial Services, and 52.212–2, Evaluation—Commercial Products and Commercial Services.

(2) Contracting officers shall insert the clause at 852.212–72, Gray Market and Counterfeit Items—Information Technology Maintenance Allowing Other-than-New Parts, in solicitations and contracts for the maintenance of information technology equipment that includes replacement parts, if used, refurbished, or remanufactured parts are acceptable, when the associated solicitation includes FAR 52.212–1, Instruction to Offerors—Commercial Products and Commercial Services, and 52.212–2, Evaluation—Commercial Products and Commercial Services.

# PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 10. The authority citation for part 824 is revised to read as follows:

**Authority:** 5 U.S.C. 552a; 38 U.S.C. 5723–5724, 5725(a)–(c); 40 U.S.C. 121(c); 41 U.S.C. 1121(c), 1702; 38 CFR 1.550 through 1.562 and 1.575 through 1.584; and 48 CFR 1.301 through 1.304.

## Subpart 824.1—Protection of Individual Privacy

■ 11. Sections 824.103–70 and 824.103–71 are added to read as follows:

### 824.103–70 Protection of privacy—general requirements and procedures related to Business Associate Agreements.

To ensure compliance with unique responsibilities to protect protected health information (PHI), contractors performing under VA contracts subject to unique PHI and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) shall comply with requirements and the clause (852.204–71, Information and Information Systems Security) prescribed at 804.1903.

(a) *HIPAA Business Associate Agreement requirement.* Under the HIPAA Privacy and Security Rules (see 45 CFR part 160), a covered entity (Veterans Health Administration (VHA)) must have a satisfactory assurance that its PHI will be safeguarded from misuse. To do so, a covered entity enters into a Business Associate Agreement (BAA) with a contractor (now the business associate), which obligates the business associate to only use the covered entity's PHI for the purposes for which it was engaged, provide the same protections and safeguards as is required from the covered entity, and agree to the same disclosure restrictions to PHI that is required of the covered entity in situations where a contractor—

(1) Creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain health care operations activities or functions on behalf of the covered entity; or

(2) Provides one or more of the services specified in the HIPAA Privacy Rule to or for the covered entity.

(b) *Veterans Health Administration (VHA)—a HIPAA covered entity.* VHA is the only administration of the Department of Veterans Affairs that is a

HIPAA covered entity under the HIPAA Privacy Rule.

(c) *Contractors or entities required to execute BAAs for contracts and other agreements become VHA business associates.* BAAs are issued by VHA or may be issued by other VA programs in support of VHA. The HIPAA Privacy Rule requires VHA to execute compliant BAAs with persons or entities that create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain activities, functions or services to, for, or on behalf of VHA.

(1) There may be other VA components or staff offices which also provide certain services and support to VHA and must receive PHI in order to do so. If these components award contracts or enter into other agreements, purchase/delivery orders, modifications, and issue Governmentwide purchase card transactions to help in the delivery of these services to VHA, they will also fall within the requirement to obtain a satisfactory assurance from these contractors by executing a BAA.

(2) Contractors or other entities supporting VHA required to create, receive, maintain, or transmit VHA PHI shall be required to execute a BAA as mandated by the HIPAA Privacy Rule and requested by the contracting officer, the contracting officer's representative (COR) or the cognizant privacy officer—

(i) Whether via a contract or agreement with VHA; or

(ii) Whether provided from or through another VA administration or staff activity contract for supplies, services or support that involves performing a certain activity, function or service to, for, or on behalf of VHA (*see* VA Directive 6066, Protected Health Information (PHI) and Business Associate Agreements Management).

(d) *BAA requirement flow down to subcontractors.* A prime contractor required to execute a BAA shall also obtain a satisfactory assurance, in the form of a BAA, that any of its subcontractors who will also create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI will comply with HIPAA requirements to the same degree as the contractor. A contractor employing a subcontractor who creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such VHA PHI under a contract or agreement is required to execute a BAA with each of its subcontractors which also obligates the subcontractor (*i.e.,* also a business associate) to provide the same protections and safeguards and agree to the same disclosure restrictions to VHA's PHI that is required of the covered entity and the prime contractor.

**824.103–71 Liquidated damages—protection of information.**

(a) *Purpose.* As required by 38 U.S.C. 5725 any contracts where sensitive personal information such as PHI must be disclosed to the contractor for the contractor to perform certain functions or services on behalf of VHA shall include a liquidated damages clause as prescribed at 811.503–70.

(b) *Applicability to contracts requiring Business Associate Agreements.* A liquidated damages clause is required (*see* 811.503–70) when performance under a contract requires a contractor to enter into a Business Associate Agreement with VHA because the contractor or its subcontractor is required to create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI, for certain services or functions, on behalf of VHA. The liquidated damages clause shall be added even in situations where the prime contractor never directly receives VA's sensitive personal information and the same flows directly to the prime contractor's subcontractor.

■ 12. Part 839 is added to read as follows:

## PART 839—ACQUISITION OF INFORMATION TECHNOLOGY

Sec.



**Authority:** 38 U.S.C. 5723–5724, 5725(a)–(c); 40 U.S.C. 121(c), 11319(b)(1)(C); 41 U.S.C. 1121(c)(3), 1303 and 1702; and 48 CFR 1.301 through 1.304.

**839.000 Scope of part.**

This part prescribes acquisition policies and procedures for use in acquiring VA information technology and information technology-related contracts (*see* 802.101) and applies to both VA-procured information technology systems as well as interagency acquisitions defined in FAR part 17 and part 817.

### Subpart 839.1—General

**839.101 Policy.**

(a)(1) In acquiring information technology, including information technology-related contracts which may involve services (including support services), and related resources (*see* the definition at FAR 2.101), contracting officers and requiring activities shall include in solicitations and contracts the requirement to comply with the following directives, policies, and procedures in order to protect VA information, information systems, and information technology—

(i) VA Directive 6500, VA Cybersecurity Program, and the directives and handbooks in the VA 6500 series, to include, but not limited to, VA Handbook 6500.6, Contract Security, which establishes VA's procedures, responsibilities, and processes for complying with current Federal law, Executive orders, policies, regulations, standards, and guidance for protecting and controlling VA sensitive information and ensuring that security requirements are included in acquisitions, solicitations, contracts, purchase orders, and task or delivery orders.

(ii) The VA directives, security requirements, procedures, and guidance in paragraph (a)(1)(i) of this section apply to all VA contracts and to contractors, subcontractors, and their employees in the performance of contractual obligations to VA for information technology products purchased from vendors, as well as for services acquired from contractors and subcontractors or business associates, through contracts and service agreements, in which access to VA information, VA sensitive information or sensitive personal information (including protected health information (PHI))—

(A) That is created, received, maintained, or transmitted, or that will be stored, generated, accessed, exchanged, processed, or utilized by VA, a VA contractor, subcontractor, or third-party servicers or associates, or on behalf of any of these entities, in the performance of their contractual obligations to VA; and

(B) By or on behalf of any of the entities identified in this section, regardless of—

(*1*) Format; or

(*2*) Whether it resides on a VA or a non-VA system, or with a contractor, subcontractor, or third-party system or electronic information system(s), including cloud services, operating for or on the VA's behalf or as required by contract.

(c) Contractors, subcontractors, and third-party servicers or associates providing support to or on behalf of the entities identified in this section, shall employ adequate security controls and use appropriate common security configurations available from the National Institute of Standards and Technology (*see* FAR 39.101(c)) as appropriate in accordance with VA regulations in this chapter, directives, handbooks, and guidance, and established service level agreements and individual contracts, orders, and agreements. Contractors, subcontractors, and third-party servicers and associates will ensure that VA information or VA sensitive information that resides on a VA system or resides on a contractor/subcontractor/third-party entities/associates information and communication technology (ICT) system(s), operating for or on VA's behalf, or as required by contract, regardless of form or format, whether electronic or manual, and information systems, are protected from unauthorized access, use, disclosure, modification, or destruction to ensure information security (*see* FAR 2.101) is provided in order to ensure the integrity, confidentiality, and availability of such information and information systems.

**839.105 Privacy.**

**839.105–70 Business Associate Agreements, information technology-related contracts and privacy.**

In accordance with 824.103–70, contracting officers and contracting officer representatives (CORs) shall ensure that contractors, their employees, subcontractors, and third-parties under the contract complete Business Associate Agreements for—

(a) Information technology or information technology-related service contracts subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) where HIPAA PHI is created, received, maintained, or transmitted, or that will be stored, generated, accessed, exchanged, processed, or utilized in order to perform certain health care operations activities or functions on behalf of the Veterans Health Administration (VHA) as a covered entity (*see* 802.101 for the definition of information technology-related contracts); or

(b) Contractors supporting other VA organizations which support VHA in this regard and which would therefore require Business Associate Agreements in accordance with 824.103–70.

**839.105–71 Liquidated damages—protection of information in information technology related contracts.**

Contracting officers shall insert in information technology related contracts the liquidated damages clause as prescribed at 811.503–70.

**839.106–70 Information security and privacy contract clauses.**

(a) Contracting officers shall insert the clause at 852.239–70, Security Requirements for Information Technology Resources, and the clause at 852.239–71, Information System Security Plan and Accreditation, in all solicitations, contracts, and orders exceeding the micro-purchase threshold that include information technology services.

(b) Contracting officers shall insert the clause at 852.239–72, Information System Design and Development, in solicitations, contracts, orders, and agreements where services to perform information system design and development are required.

(c) Contracting officers shall insert the clause at 852.239–73, Information System Hosting, Operation, Maintenance or Use, in solicitations, contracts, orders, and agreements where services to perform information system hosting, operation, maintenance, or use are required.

(d) Contracting officers shall insert the clause at 852.239–74, Security Controls Compliance Testing, in solicitations, contracts, orders, and agreements, when the clause at 852.239–72 or 852.239–73 is inserted.

## Subpart 839.2—Information and Communication Technology

**839.201 Scope of subpart.**

This subpart applies to the acquisition of Information and Communication Technology (ICT) supplies and services. It concerns the access to and use of information and data by both Federal employees with disabilities and members of the public with disabilities in accordance with FAR 39.201. This subpart implements VA policy on section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and 36 CFR parts 1193 and 1194 as it applies to contracts and acquisitions when developing, procuring, maintaining, or using ICT.

**839.203 Applicability.**

(a) *General.* Solicitations for information technology (IT) (*i.e.,* ICT) or IT-related supplies and services shall require the contractor to submit a VA Section 508 Checklist (*see https://www.section508.va.gov/*).

**839.203–70 Information and communication technology accessibility standards—contract clause and provision.**

(a) The contracting officer shall insert the provision at 852.239–75, Information and Communication Technology Accessibility Notice, in all solicitations.

(b) The contracting officer shall insert the clause at 852.239–76, Information and Communication Technology Accessibility, in all contracts and orders.

## PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. The authority citation for part 852 continues to read as follows:

**Authority:** 38 U.S.C. 8127–8128 and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

## Subpart 852.2—Texts of Provisions and Clauses

■ 14. Section 852.204–71 is added to read as follows:

**852.204–71 Information and Information Systems Security.**

As prescribed in 804.1903, insert the following clause:

**Information and Information Systems Security (Feb 2023)**

(a) *Definitions.* As used in this clause—

*Business Associate* means an entity, including an individual (other than a member of the workforce of a covered entity), company, organization or another covered entity, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, that performs or assists in the performance of a function or activity on behalf of the Veterans Health Administration (VHA) that involves the creating, receiving, maintaining, transmitting of, or having access to, protected health information (PHI). The term also includes a subcontractor of a business associate that creates, receives, maintains, or transmits PHI on behalf of the business associate.

*Business Associate Agreement (BAA)* means the agreement, as dictated by the Privacy Rule, between VHA and a business associate, which must be entered into in addition to the underlying contract for services and before any release of PHI can be made to the business associate, in order for the business associate to perform certain functions or activities on behalf of VHA.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information whether automated or manual.

*Information technology* (*see* FAR 2.101) also means Information and Communication Technology (ICT).

*Information technology-related contracts* means those contracts which include services (including support services), and related resources for information technology as defined in 802.101.

*Privacy officer* means the VA official with responsibility for implementing and oversight of privacy related policies and practices that impact a given VA acquisition.

*Sensitive personal information* means, with respect to an individual, any information about the individual maintained by VA, including but not limited to the following:

(1) Education, financial transactions, medical history, and criminal or employment history.

(2) Information that can be used to distinguish or trace the individual's identity, including but not limited to name, social security number, date and place of birth, mother's maiden name, or biometric records.

*Security plan* means a formal document that provides an overview of the security requirements for an information system or an information security program and describes the security controls in place or planned for meeting those requirements.

*VA Information Security Rules of Behavior for Organizational Users (VA National Rules of Behavior)* means a set of VA rules that describes the responsibilities and expected behavior of users of VA information or information systems.

*VA sensitive information* means all VA data, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the information and includes sensitive personal information. The term includes information where improper use or disclosure could adversely affect the ability of VA to accomplish its mission, proprietary information, records about individuals requiring protection under various confidentiality provisions such as the Privacy Act and the HIPAA Privacy Rule, and information that can be withheld under the Freedom of Information Act. Examples of VA sensitive information include the following: individually-identifiable medical, benefits, and personnel information; financial, budgetary, research, quality assurance, confidential commercial, critical infrastructure, investigatory, and law enforcement information; information that is confidential and privileged in litigation such as information protected by the deliberative process privilege, attorney work-product privilege, and the attorney-client privilege; and other information which, if released, could result in violation of law or harm or unfairness to any individual or group, or could adversely affect the national interest or the conduct of Federal programs.

(b) *General.* Contractors, subcontractors, their employees, third-parties, and business associates with access to VA information, information systems, or information technology (IT) or providing and accessing IT-related goods and services, shall adhere to VA Directive 6500, VA Cybersecurity Program, and the directives and handbooks in the VA 6500 series related to VA information (including VA sensitive information and sensitive personal information and information systems security and privacy), as well as those set forth in the contract specifications, statement of work, or performance work statement. These include, but are not limited to, VA Handbook 6500.6, Contract Security; and VA Directive and Handbook 0710, *Personnel Security and Suitability Program,* which establishes VA's procedures, responsibilities, and processes for complying with current Federal law, Executive Orders, policies, regulations, standards and guidance for protecting VA information, information systems (*see* 802.101, Definitions) security and privacy, and adhering to personnel security requirements when accessing VA information or information systems.

(c) *Access to VA information and VA information systems.* (1) Contractors are limited in their request for logical or physical access to VA information or VA information systems for their employees, subcontractors, third parties and business associates to the extent necessary to perform the services or provide the goods as specified in the contracts, agreements, task, delivery or purchase orders.

(2) All Contractors, subcontractors, third parties, and business associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors to access VA information and VA information systems shall be in accordance with VA Directive and Handbook 0710, *Personnel Security and Suitability Program.*

(3) Contractors, subcontractors, third parties, and business associates who require access to national security programs must have a valid security clearance.

(4) HIPAA Business Associate Agreement requirement. Contractors shall enter into a Business Associate Agreement (BAA) with VHA, VA's Covered Entity, when contract requirements and access to protected health information is required and when requested by the Contracting Officer, or the Contracting Officer's Representative (COR) (see VAAR 824.103–70). Under the HIPAA Privacy and Security Rules, a Covered Entity (VHA) must have a satisfactory assurance that its PHI will be safeguarded from misuse. To do so, a Covered Entity enters into a BAA with a contractor (now the business associate), which obligates the business associate to only use the Covered Entity's PHI for the purposes for which it was engaged, provide the same protections and safeguards as is required from the Covered Entity, and agree to the same disclosure restrictions to PHI that is required of the Covered Entity in situations where a contractor—

(i) Creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain health care operations activities or functions on behalf of the Covered Entity; or

(ii) Provides one or more of the services specified in the Privacy Rule to or for the Covered Entity.

(A) *Contractors or entities required to execute BAAs for contracts and other agreements become VHA business associates.* BAAs are issued by VHA or may be issued by other VA programs in support of VHA. The HIPAA Privacy Rule requires VHA to execute compliant BAAs with persons or entities that create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain activities, functions or services to, for, or on behalf of VHA. There may be other VA components or staff offices which also provide certain services and support to VHA and must receive PHI in order to do so. If these components award contracts or enter into other agreements, purchase/delivery orders, modifications and issue governmentwide purchase card transactions to help in the delivery of these services to VHA, they will also fall within the requirement to obtain a satisfactory assurance from these contractors by executing a BAA.

(B) *BAA requirement flow down to subcontractors.* A prime Contractor required to execute a BAA shall also obtain a satisfactory assurance, in the form of a BAA, that any of its subcontractors who will also create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI will comply with HIPAA requirements to the same degree as the Contractor. Contractors employing a subcontractor who creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such VHA PHI under a contract or agreement is required to execute a BAA with each of its subcontractors which also obligates the subcontractor (*i.e.,* also a business associate) to provide the same protections and safeguards and agree to the same disclosure restrictions to VHA's PHI that is required of the Covered Entity and the prime Contractor.

(d) *Contractor operations required to be in United States.* Custom software development and outsourced operations must be located in the U.S. to the maximum extent practicable. If such services are proposed to be performed outside the continental United States, and are not otherwise disallowed by other Federal law, regulations or policy, or other VA policy or other mandates as stated in the contract, specifications, statement of work or performance work statement (including applicable Business Associate Agreements), the Contractor/subcontractor must state in its proposal where all non-U.S. services are provided. At a minimum, the Contractor/subcontractor must include a detailed Information Technology Security Plan, for review and approval by the Contracting Officer, specifically to address mitigation of the resulting problems of communication, control, and data protection.

(e) *Contractor/subcontractor employee reassignment and termination notification.* Contractors and subcontractors shall provide written notification to the Contracting Officer and Contracting Officer's Representative (COR) immediately, and not later than four

(4) hours, when an employee working on a VA information system or with access to VA information is reassigned or leaves the Contractor or subcontractor's employment on the cognizant VA contract. The Contracting Officer and COR must also be notified immediately by the Contractor or subcontractor prior to an unfriendly termination.

(f) *VA information custodial requirements.* (1) *Release, publication, and use of data.* Information made available to a Contractor or subcontractor by VA for the performance or administration of a contract or information developed by the Contractor/subcontractor in performance or administration of a contract shall be used only for the stated contract purpose and shall not be used in any other way without VA's prior written approval. This clause expressly limits the Contractor's/subcontractor's rights to use data as described in Rights in Data—General, FAR 52.227–14(d).

(2) *Media sanitization.* VA information shall not be co-mingled with any other data on the Contractors/subcontractor's information systems or media storage systems in order to ensure federal and VA requirements related to data protection, information segregation, classification requirements, and media sanitization can be met (*see* VA Directive 6500, VA Cybersecurity Program). VA reserves the right to conduct scheduled or unscheduled on-site inspections, assessments, or audits of Contractor and subcontractor IT resources, information systems and assets to ensure data security and privacy controls, separation of data and job duties, and destruction/media sanitization procedures are in compliance with Federal and VA requirements. The Contractor and subcontractor will provide all necessary access and support to VA and/or GAO staff during periodic control assessments or audits.

(3) *Data retention, destruction, and contractor self-certification.* The Contactor and its subcontractors are responsible for collecting and destroying any VA data provided, created, or stored under the terms of this contract, to a point where VA data or materials are no longer readable or reconstructable to any degree, in accordance with VA Directive 6371, Destruction of Temporary Paper Records, or subsequent issue. Prior to termination or completion of this contract, the Contractor/subcontractor must provide its plan for destruction of all VA data in its possession according to VA Handbook 6500, and VA Cybersecurity Program, including compliance with National Institute of Standards and Technology (NIST) 800–88, Guidelines for Media Sanitization, for the purposes of media sanitization on all IT equipment. The Contractor must certify in writing to the Contracting Officer within 30 days of termination of the contract that the data destruction requirements in this paragraph have been met.

(4) *Return of VA data and information.* When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to the VA (as stipulated by the Contracting Officer or the COR) or the Contractor/subcontractor must hold it until otherwise directed. Items returned will be hand carried, securely mailed, emailed, or securely electronically transmitted to the Contracting Officer or to the address as provided in the contract or by the assigned COR, and/or accompanying BAA. Depending on the method of return, Contractor/subcontractor must store, transport, or transmit VA sensitive information, when permitted by the contract using VA-approved encryption tools that are, at a minimum, validated under Federal Information Processing Standards (FIPS) 140–3 (or its successor). If mailed, Contractor/subcontractor must send via a trackable method (USPS, UPS, Federal Express, etc.) and immediately provide the Contracting Officer with the tracking information. No information, data, documentary material, records or equipment will be destroyed unless done in accordance with the terms of this contract and the VHA Records Control Schedule 10–1.

(5) *Use of VA data and information.* The Contractor/subcontractor must receive, gather, store, back up, maintain, use, disclose and dispose of VA information only in compliance with the terms of the contract and applicable Federal and VA information confidentiality and security laws, regulations and policies. If Federal or VA information confidentiality and security laws, regulations and policies become applicable to the VA information or information systems after execution of the contract, or if the National NIST issues or updates applicable FIPS or Special Publications (SP) after execution of this contract, the parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations and policies for this contract as a result of any updates, if required.

(6) *Copying VA data or information.* The Contractor/subcontractor shall not make copies of VA information except as authorized and necessary to perform the terms of the contract or to preserve electronic information stored on Contractor/subcontractor electronic storage media for restoration in case any electronic equipment or data used by the Contractor/subcontractor needs to be restored to an operating state. If copies are made for restoration purposes, after the restoration is complete, the copies must be appropriately destroyed.

(7) *Violation of information custodial requirements.* If VA determines that the Contractor has violated any of VA's information confidentiality, privacy, or security provisions, it shall be sufficient grounds for VA to withhold payment to the Contractor or third-party or terminate the contract for default in accordance with FAR part 49 or terminate for cause in accordance with FAR 12.403.

(8) *Encryption.* The Contractor/subcontractor must store, transport, or transmit VA sensitive information, when permitted by the contract, using cryptography, and VA-approved encryption tools that are, at a minimum, validated under FIPS 140–3 (or its successor).

(9) *Firewall and web services security controls.* The Contractor/subcontractor's firewall and web services security controls, if applicable, shall meet or exceed VA's minimum requirements. VA Configuration Guidelines are available upon request.

(10) *Disclosure of VA data and information.* Except for uses and disclosures of VA information authorized in a cognizant contract for performance of the contract, the Contractor/subcontractor may use and disclose VA information only in two other situations: (i) subject to paragraph (f)(10) of this section, in response to a court order from a court of competent jurisdiction, or (ii) with VA's prior written approval. The Contractor/subcontractor must refer all requests for, demands for production of, or inquiries about, VA information and information systems to the Contracting Officer for response. If the Contractor/subcontractor is in receipt of a court order or other request or believes it has a legal requirement to disclose VA information, that Contractor/subcontractor shall immediately refer such court order or other request to the Contracting Officer for response. If the Contractor or subcontractor discloses information on behalf of VHA, the Contractor and/or subcontractor must maintain an accounting of disclosures. Accounting of Disclosures documentation maintained by the Contractor/subcontractor will include the name of the individual to whom the information pertains, the date of each disclosure, the nature or description of the information disclosed, a brief statement of the purpose of each disclosure or, in lieu of such statement, a copy of a written request for a disclosure, and the name and address of the person or agency to whom the disclosure was made. The Contractor/subcontractor will provide its Accounting of Disclosures upon request and within 15 calendar days to the assigned COR and Privacy Officer. Accounting of disclosures should be provided electronically via encrypted email to the COR and designated VA facility Privacy Officer as provided in the contract, BAA, or by the Contracting Officer. If providing the Accounting of Disclosures electronically cannot be done securely, the Contractor/subcontractor will provide copies via trackable methods (UPS, USPS, Federal Express, etc.) immediately, providing the designated COR and Privacy Officer with the tracking information.

(11) *Compliance with privacy statutes and applicable regulations.* The Contractor/subcontractor shall not disclose VA information protected by any of VA's privacy statutes or applicable regulations including but not limited to: the Privacy Act of 1974, 38 U.S.C. 5701, confidential nature of claims, 38 U.S.C. 5705, confidentiality of medical quality assurance records and/or 38 U.S.C. 7332, confidentiality of certain health records pertaining to drug addiction, sickle cell anemia, alcoholism or alcohol abuse, or infection with human immunodeficiency virus or the HIPAA Privacy Rule. If the Contractor/subcontractor is in receipt of a court order or other requests for VA information or has questions if it can disclose information protected under the above-mentioned confidentiality statutes because it is required by law, that Contractor/subcontractor shall immediately refer such court order or other request to the Contracting Officer for response.

(g) *Report of known or suspected security/privacy incident.* The Contractor, subcontractor, third-party affiliate or business associate, and its employees shall notify VA immediately via the Contracting Officer and the COR or within one (1) hour of an incident which is an occurrence (including the discovery or disclosure of successful exploits of system vulnerability) that (A) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or the availability of its data and operations, or of its information or information system(s); or (B) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies. The initial notification may first be made verbally but must be followed up in writing within one (1) hour. See VA Data Breach Response Service at *https://www.oprm.va.gov/dbrs/about_dbrs.aspx.* Report all actual or suspected security/privacy incidents and report the information to the Contracting Officer and the COR as identified in the contract or as directed in the contract, within one hour of discovery or suspicion.

(1) Such issues shall be remediated as quickly as is practical, but in no event longer than ____ days [*Fill in: Contracting Officer fills in the number of days*]. The Contractor shall notify the Contracting Officer in writing.

(2) When the security fixes involve installing third party patched (*e.g.,* Microsoft OS patches or Adobe Acrobat), the Contractor will provide written notice to VA that the patch has been validated as not affecting the systems within 10 working days. When the Contractor is responsible for operations or maintenance of the systems, they shall apply the security fixes within ____ [*Fill in: Contracting Officer fills in the number of days in consultation with requiring activity*].

(3) All other vulnerabilities shall be remediated in a timely manner based on risk, but within 60 days of discovery or disclosure. Contractors shall notify the Contracting Officer, and COR within 2 business days after remediation of the identified vulnerability. Exceptions to this paragraph (*e.g.,* for the convenience of VA) must be requested by the Contractor through the COR and shall only be granted with approval of the Contracting Officer and the VA Assistant Secretary for Office of Information and Technology. These exceptions will be tracked by the Contractor in concert with the Government in accordance with VA Directive 6500.6 and related VA Handbooks.

(h) *Security and privacy incident investigation.* (1) The term ''privacy incident'' means the unauthorized disclosure or use of VA information protected under a confidentiality statute or regulation.

(2) The term ''security incident'' means an occurrence that (A) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information systems; or (B) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable policies. The Contractor/subcontractor shall immediately notify the Contracting Officer and COR for the contract of any known or suspected security or privacy incident, or any other unauthorized disclosure of sensitive information, including that contained in system(s) to which the Contractor/subcontractor has access.

(3) To the extent known by the Contractor/subcontractor, the Contractor/subcontractor's notice to VA shall identify the information involved, the circumstances surrounding the incident (including to whom, how, when, and where the VA information or assets were placed at risk or compromised), and any other information that the Contractor/subcontractor considers relevant.

(4) With respect to unsecured PHI, the Business Associate is deemed to have discovered a security incident as defined above when the Business Associate either knew, or by exercising reasonable diligence should have been known to an employee of the Business Associate. Upon discovery, the Business Associate must notify VHA of the security incident immediately within one hour of discovery or suspicion as agreed to in the BAA.

(5) In instances of theft or break-in or other criminal activity, the Contractor/subcontractor must concurrently report the incident to the appropriate law enforcement entity (or entities) of jurisdiction, including the VA OIG and the VA Office of Security and Law Enforcement. The Contractor, its employees, and its subcontractors and their employees shall cooperate with VA and any law enforcement authority responsible for the investigation and prosecution of any possible criminal law violation(s) associated with any incident. The Contractor/subcontractor shall cooperate with VA in any civil litigation to recover VA information, obtain monetary or other compensation from a third party for damages arising from any incident, or obtain injunctive relief against any third party arising from, or related to, the incident.

(i) *Data breach notification requirements.* (1) This contract may require access to sensitive personal information. If so, the Contractor is liable to VA for liquidated damages in the event of a data breach involving any VA sensitive personal information the Contractor/Subcontractor processes or maintains under the contract as set forth in clause 852.211–76, Liquidated Damages—Reimbursement for Data Breach Costs.

(2) The Contractor/subcontractor shall provide notice to VA of a privacy or security incident as set forth in the Security and Privacy Incident Investigation section of this clause. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. The Contractor shall fully cooperate with VA or third-party entity performing an independent risk analysis on behalf of VA. Failure to cooperate may be deemed a material breach and grounds for contract termination.

(3) The Contractor/subcontractor shall fully cooperate with VA or any Government agency conducting an analysis regarding any notice of a data breach or potential data breach or security incident which may require the Contractor to provide information to the Government or third-party performing a risk analysis for VA, and shall address all relevant information concerning the data breach, including the following:

(i) Nature of the event (loss, theft, unauthorized access).

(ii) Description of the event, including—

(A) Date of occurrence;

(B) Date of incident detection;

(C) Data elements involved, including any PII, such as full name, social security number, date of birth, home address, account number, disability code.

(D) Number of individuals affected or potentially affected.

(E) Names of individuals or groups affected or potentially affected.

(F) Ease of logical data access to the lost, stolen or improperly accessed data in light of the degree of protection for the data, *e.g.,* unencrypted, plain text.

(G) Amount of time the data has been out of VA control.

(H) The likelihood that the sensitive personal information will or has been compromised (made accessible to and usable by unauthorized persons).

(I) Known misuses of data containing sensitive personal information, if any.

(J) Assessment of the potential harm to the affected individuals.

(K) Data breach analysis as outlined in 6500.2 Handbook, Management of Breaches Involving Sensitive Personal Information, as appropriate.

(L) Whether credit protection services may assist record subjects in avoiding or mitigating the results of identity theft based on the sensitive personal information that may have been compromised.

(M) Steps taken in response to mitigate or prevent a repetition of the incident.

(j) *Training.* (1) All Contractor employees and subcontractor employees requiring access to VA information or VA information systems shall complete the following before being granted access to VA information and its systems:

(i) On an annual basis, successfully complete the VA Privacy and Information Security Awareness and VA Information Security Rules of Behavior training.

(ii) On an annual basis, sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the VA Information Security Rules of Behavior for Organizational Users, relating to access to VA information and information systems.

(iii) Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access.

(2) The Contractor shall provide to the Contracting Officer and/or the COR a copy of the training certificates and affirmation that VA Information Security Rules of Behavior for Organizational Users signed by each applicable employee have been completed and submitted within five (5) days of the initiation of the contract and annually thereafter, as required.

(3) Failure to complete the mandatory annual training and acknowledgement of the VA Information Security Rules of Behavior,

within the timeframe required, is grounds for suspension or termination of all physical or electronic access privileges and removal from work on the contract until such time as the training and documents are complete.

(k) *Subcontract flow down.* The Contractor shall include the substance of this clause, including this paragraph (k), in subcontracts, third-party agreements, and BAAs, of any amount and in which subcontractor employees, third-party servicers/employees, and business associates will perform functions where they will have access to VA information (including VA sensitive information, *i.e.,* sensitive personal information and protected health information), information systems, information technology (IT) or providing and accessing information technology-related contract services, support services, and related resources (see VAAR 802.101 definition of information technology-related contracts).

(End of clause)

■ 15. Section 852.211–76 is added to read as follows:

**852.211–76 Liquidated Damages—Reimbursement for Data Breach Costs.**

As prescribed in 811.503–70, insert the following clause:

**Liquidated Damages—Reimbursement for Data Breach Costs (Feb 2023)**

(a) *Definition.* As used in this clause, ''contract'' means any contract, agreement, order or other instrument and encompasses the definition set forth in FAR 2.101.

(b) *Non-disclosure requirements.* As a condition of performance under a contract, order, agreement, or other instrument that requires access to sensitive personal information as defined in VAAR 802.101, the following is expressly required—

(1) The Contractor, subcontractor, their employees or business associates shall not, directly or through an affiliate or employee of the Contractor, subcontractor, or business associate, disclose sensitive personal information to any other person unless the disclosure is lawful and is expressly permitted under the contract; and

(2) The Contractor, subcontractor, their employees or business associates shall immediately notify the Contracting Officer and the Contracting Officer's Representative (COR) of any security incident that occurs involving sensitive personal information.

(c) *Liquidated damages.* If the Contractor or any of its agents fails to protect VA sensitive personal information or otherwise engages in conduct which results in a data breach, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of ____ [*Contracting Officer insert amount*] per affected individual in order to cover costs related to the notification, data breach analysis and credit monitoring. In the event the Contractor provides payment of actual damages in an amount determined to be adequate by the Contracting Officer, the Contracting Officer may forgo collection of liquidated damages.

(d) *Purpose of liquidated damages.* Based on the results from VA's determination that there was a data breach caused by Contractor's or any of its agents' failure to protect or otherwise engaging in conduct to cause a data breach of VA sensitive personal information, and as directed by the Contracting Officer, the Contractor shall be responsible for paying to the VA liquidated damages in the amount of ____ [*Contracting Officer insert amount*] per affected individual to cover the cost of the following:

(1) Notification related costs.

(2) Credit monitoring reports.

(3) Data breach analysis and impact.

(4) Fraud alerts.

(5) Identity theft insurance.

(e) *Relationship to termination clause, if applicable.* If the Government terminates this contract, purchase order, or agreement, in whole or in part under clause 52.249–8, Default—Fixed-Price Supply and Service, or any other related FAR or VAAR clause included in the contract, in addition to the required liquidated damages for data breach-related expenses specified in paragraph (c) above, the Contractor is liable for excess costs for those supplies and services for repurchase as may be required under the Termination clause.

(End of clause)

*Alternate I* (FEB 2023). In commercial products or commercial services acquisitions awarded under the procedures of FAR part 8 or 12, substitute this paragraph (e) in lieu of paragraph (e) in the basic clause:

(e) *Relationship to termination clause, if applicable.* If the Government terminates this contract in whole or in part under the Termination for cause paragraph, FAR 52.212–4(m), Contract Terms and Conditions—Commercial Products and Commercial Services, the Contractor is liable for damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These damages are in addition to costs of repurchase as may be required under the Termination clause.

*Alternate II* (FEB 2023). In simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial products or commercial services awarded under the procedures of FAR part 13 (*see* FAR 13.302–5(d)(1) and the clause at FAR 52.213–4), substitute this paragraph (e) in lieu of paragraph (e) in the basic clause:

(e) *Relationship to termination clause, if applicable.* If the Government terminates this contract in whole or in part under the Termination for cause paragraph, FAR 52.213–4(g), Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services), or any other applicable FAR or VAAR clause, the Contractor is liable for damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These damages are in addition to costs of repurchase as may be required under the Termination clause.

**852.212–70 [Removed and Reserved]**

■ 16. Section 852.212–70 is removed and reserved.

■ 17. Section 852.212–71 is revised to read as follows:

**852.212–71 Gray Market and Counterfeit Items.**

As prescribed in 812.301(f), insert the following clause:

**Gray Market and Counterfeit Items (Feb 2023)**

(a) No used, refurbished, or remanufactured supplies or equipment/parts shall be provided. This procurement is for new Original Equipment Manufacturer (OEM) items only. No gray market items shall be provided. Gray market items are OEM goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

(b) No counterfeit supplies or equipment/parts shall be provided. Counterfeit items include unlawful or unauthorized reproductions, substitutions, or alterations that have been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitutions include used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(c) Vendor shall be an OEM, authorized dealer, authorized distributor, or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

■ 18. Section 852.212–72 is added to read as follows:

**852.212–72 Gray Market and Counterfeit Items—Information Technology Maintenance Allowing Other-than-New Parts.**

As prescribed in 812.301(f), insert the following clause:

**Gray Market and Counterfeit Items—Information Technology Maintenance Allowing Other-Than-New Parts (Feb 2023)**

(a) Used, refurbished, or remanufactured parts may be provided. No gray market supplies or equipment shall be provided. Gray market items are Original Equipment Manufacturer (OEM) goods intentionally or unintentionally sold outside an authorized

sales territory or sold by non-authorized dealers in an authorized sales territory.

(b) No counterfeit supplies or equipment shall be provided. Counterfeit items include unlawful or unauthorized reproductions, substitutions, or alterations that have been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitutions include used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(c) Vendor shall be an OEM, authorized dealer, authorized distributor or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

■ 19. Section 852.239–70 is added to read as follows:

**852.239–70 Security Requirements for Information Technology Resources.**

As prescribed in 839.106–70, insert the following clause:

**Security Requirements for Information Technology Resources (Feb 2023)**

(a) *Definitions.* As used in this clause—

*Information technology* has the same meaning in FAR 2.101 and also *means* Information and Communication Technology (ICT).

*Information system security plan* means a formal document that provides an overview of the security equirements for an information system and describes the security controls in place or planned for meeting those requirements.

(b) *Responsibilities.* The Contractor shall be responsible for information system security for all systems connected to a Department of Veterans Affairs (VA) network or operated by the Contractor for VA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or other system access to VA information that directly supports the mission of VA. Examples of tasks that require security provisions include—

(1) Hosting of VA e-Government sites or other information technology operations;

(2) Acquisition, transmission, or analysis of data owned by VA with significant replacement cost should the contractor's copy be corrupted; and

(3) Access to VA general support systems/major applications at a level beyond that granted the general public, *e.g.,* bypassing a firewall.

(c) *Information system security plan.* The Contractor shall develop, provide, implement, and maintain an Information System Security Plan. VA information systems must have an information system security plan that provides an overview of the security requirements for the system and describes the security controls in place or the plan for meeting those requirements. This plan shall describe the processes and procedures that the Contractor will follow to ensure appropriate security of information system resources developed, processed, or used under this contract. The information system security plan should include implementation status, responsible entities, resources, and estimated completion dates. Information system security plans may also include, but are not limited to, a compiled list of system characteristics, and key security-related documents such as a risk assessment, PIA, system interconnection agreements, contingency plan, security configurations, configuration management plan, and incident response plan. The plan shall address the specific contract requirements regarding information systems related support or services included in the contract, to include the performance work statement (PWS) or statement of work (SOW). The Contractor's Information System Security Plan shall comply with applicable Federal Laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Modernization Act (FISMA) of 2014 and the E-Government Act of 2002. The plan shall meet information system security requirements in accordance with Federal and VA policies and procedures, and as amended during the term of this contract, and include, but are not limited to the following.

(1) OMB Circular A–130, Managing Information as a Strategic Resource;

(2) National Institute of Standards and Technology (NIST) Guidelines; and

(3) VA Directive 6500, VA Cybersecurity Program, and the directives and handbooks in the VA 6500 series related to VA information (including VA sensitive information and sensitive personal information and information systems security and privacy), as well as those set forth in the contract specifications, statement of work, or performance work statement. These include, but are not limited to, VA Handbook 6500.6, Contract Security; and VA Directive and Handbook 0710, Personnel Security and Suitability Program, which establishes VA's procedures, responsibilities, and processes for complying with current Federal law, Executive Orders, policies, regulations, standards and guidance for protecting VA information, information systems (see 802.101, Definitions) security and privacy, and adhering to personnel security requirements when accessing VA information or information systems.

(d) *Submittal of plan.* Within 90 days after contract award, the Contractor shall submit the Information System Security Plan to the Contracting Officer for review and approval.

(e) *Security accreditation.* As required by current VA policy, the Contractor shall submit written proof of information system security accreditation to the Contracting Officer for non-VA owned systems. Such written proof may be furnished either by the Contractor or by a third party. Accreditation shall be in accordance with VA policy available from the Contracting Officer upon request. The Contractor shall submit for acceptance by the Contracting Officer along with this accreditation a final information system security plan, such as a risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. The accreditation and the final information system security plan and the accompanying documents, such as a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan.

(f) *Annual validation.* On an annual basis, the Contractor shall verify in writing to the Contracting Officer that the Information System Security Plan remains valid.

(g) *Banners.* The Contractor shall ensure that the official VA banners are displayed on all VA systems (both public and private) operated by the Contractor that contain Privacy Act information before allowing anyone access to the system. The Office of Information Technology will make official VA banners available to the Contractor.

(h) *Screening and access.* The Contractor shall screen all personnel requiring privileged access or limited privileged access to systems operated by the Contractor for VA or interconnected to a VA network in accordance with VA Directives and Handbooks referenced in paragraph (c) of this clause.

(i) *Training.* The Contractor shall ensure that its employees performing services under this contract complete VA security awareness training on an annual basis. This includes signing an acknowledgment that they have read, understand, and agree to abide by the VA Information Security Rules of Behavior (VA National Rules of Behavior) as required by 38 U.S.C. 5723; FAR 39.105, Privacy; clause 852.204–71, Information and Information Systems Security, and this clause on an annual basis.

(j) *Government access.* The Contractor shall provide the Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. The Contractor shall provide access to enable a program of information system inspection (to include vulnerability testing), investigation and audit (to safeguard against threats and hazards to the integrity, availability and confidentiality of VA data or to the function of information systems operated on behalf of VA), and to preserve evidence of computer crime.

(k) *Notification of termination of employees.* The Contractor shall immediately notify the Contracting Officer when an employee who has access to VA information systems or data terminates employment.

(l) *Subcontractor flow down requirement.* The Contractor shall incorporate and flow down the substance of this clause to all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

■ 20. Section 852.239–71 is added to read as follows:

**852.239–71 Information System Security Plan and Accreditation.**

As prescribed in 839.106–70, insert the following provision:

**Information System Security Plan and Accreditation (Feb 2023)**

All offers submitted in response to this solicitation or request for quotation shall address the approach for completing the security plan and accreditation requirements in clause 852.239–70, Security Requirements for Information Technology Resources.

(End of provision)

■ 21. Section 852.239–72 is added to read as follows:

**852.239–72 Information System Design and Development.**

As prescribed in 839.106–70, insert the following clause:

**Information System Design and Development (Feb 2023)**

(a) *Design or development at non-VA facilities.* Information systems that are designed or developed for or on behalf of VA at non-VA facilities shall comply with all VA directives developed in accordance with the Federal Information Security Modernization Act (FISMA), Health Insurance Portability and Accountability Act (HIPAA) regulations, NIST, and related VA security and privacy control requirements for Federal information systems. This includes standards for the protection of electronic protected health information (PHI), outlined in 45 CFR part 164, subpart C, information and system security categorization level designations in accordance with FIPS 199 and FIPS 200 with implementation of all baseline security controls commensurate with the FIPS 199 system security categorization and the Trusted Internet Connections (TIC) Reference Architecture).

(b) *Privacy Impact Assessment.* During the development cycle a Privacy Impact Assessment (PIA) must be completed, provided to the COR, and approved by the VA Privacy Service in accordance with VA Directive 6508, Implementation of Privacy Threshold Analysis and Privacy Impact Assessment.

(c) *Security of procured or developed systems and technologies.* The Contractor shall ensure the security of all procured or developed systems and technologies, including their subcomponents (hereinafter referred to as ''Systems''), throughout the life of the contract and any extension, warranty, or maintenance periods. This includes, but is not limited to, workarounds, patches, hotfixes, upgrades, and any physical components (hereafter referred to as Security Fixes) which may be necessary to fix all security vulnerabilities published or known to the Contractor anywhere in the Systems, including Operating Systems and firmware. The Contractor shall ensure that Security Fixes shall not negatively impact the Systems.

(d) *Subcontract flow down requirements.* The Contractor shall include the clause at 52.224–1, Privacy Act Notification, in every solicitation and/or subcontract awarded by the Contractor when the clause FAR 52.224–1 is included in its contract.

(End of clause)

■ 22. Section 852.239–73 is added to read as follows:

**852.239–73 Information System Hosting, Operation, Maintenance, or Use.**

As prescribed in 839.106–70, insert the following clause:

**Information System Hosting, Operation, Maintenance, or Use (Feb 2023)**

(a) *Definitions.* As used in this clause—

*Assessment and Authorization* (A&A) means the process used to ensure information systems including Major Applications and General Support Systems have effective security safeguards which have been implemented, planned for, and documented in an Information Technology Security Plan. The A&A process per applicable VA policies and procedures is the mechanism by which VA provides an Authorization to Operate (ATO), the official management decision given by the VA to authorize operation of an information system (see VA Handbook 6500 for additional details).

*Information system security plan* means a formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements.

(b) *Hosting, operation, maintenance, or use at non-VA facilities.* For information systems that are hosted, operated, maintained, or used on behalf of VA at non-VA facilities, Contractors/subcontractors are fully responsible and accountable for ensuring compliance with the applicable Health Insurance Portability and Accountability (HIPAA) Act of 1996 (HIPAA) Privacy and Security Rules, the Privacy Act and other required VA confidentiality statutes included in VA's mandatory yearly training and privacy handbooks, Federal Information Security Modernization Act (FISMA), National Institute of Standards and Technology (NIST), Federal Information Processing Standards (FIPS), and VA security and privacy directives and handbooks. This includes conducting compliant risk assessments, routine vulnerability scanning, system patching and change management procedures, and the completion of an acceptable contingency plan for each system. The Contractor's security control procedures must be equivalent to or exceed, those procedures used to secure VA systems. A Privacy Impact Assessment (PIA) must also be provided to the COR and approved by VA Privacy Service prior to approval to operate. All external internet connections to VA's network involving VA information must be in accordance with the Trusted internet Connections (TIC) Reference Architecture and reviewed and approved by VA prior to implementation. For Cloud Services hosting, the Contractor shall also ensure compliance with the Federal Risk and Authorization Management Program (FedRAMP).

(c) *Collecting, processing, transmitting, and storing of VA sensitive information.* Adequate security controls for collecting, processing, transmitting, and storing of VA sensitive information, must be in place, tested, and approved by VA prior to hosting, operation, maintenance, or use of the information system, or systems by or on behalf of VA. These security controls are to be assessed and stated within the Information System Security Plan and if these controls are determined not to be in place, or inadequate, a Plan of Action and Milestones (POA&M) must be submitted and approved prior to the collection, processing, transmitting, and storing of VA sensitive information.

(d) *Annual FISMA security controls assessment.* The Contractor/subcontractor's system must adhere to all FISMA, FIPS, and NIST standards related to the annual FISMA security controls assessment and review and update the Privacy Impact Assessment. Any deficiencies noted during this assessment must be provided to the Contracting Officer for entry into VA's POA&M management process. The Contractor/subcontractor must use VA's POA&M process to document planned remedial actions to address any deficiencies in information security policies, procedures, and practices, and the completion of those activities. Security deficiencies must be corrected within the timeframes specified by the VA in the performance work statement (PWS) or statement of work (SOW), or in the approved remediation plan through the VA POA&M process. Contractor/subcontractor procedures are subject to periodic, unannounced assessments by VA officials, including the VA Office of Inspector General. The physical security aspects associated with Contractor/subcontractor activities must also be subject to such assessments. The results of an annual review or a major change in the cybersecurity posture at any time may indicate the need for reassessment and reauthorization of the system. If major changes to the system occur that may affect the privacy or security of the data or the system, the A&A of the system may need to be reviewed, retested and re-authorized per VA Handbook 6500. This may require reviewing and updating all of the documentation as described in VA Handbook 6500.6 (*e.g.,* System Security Plan, Contingency Plan). See VA Handbook 6500.6 for a list of documentation. The VA Information System Risk Management (ISRM) office can provide guidance on whether a new A&A would be necessary.

(e) *Annual self-assessment.* The Contractor/subcontractor must conduct an annual self-assessment on all systems and outsourced services as required. Both hard copy and electronic copies of the assessment must be provided to the COR. VA reserves the right to conduct such an assessment using government personnel or another Contractor/subcontractor. The Contractor/subcontractor must take appropriate and timely action, as may be specifically addressed in the contract, to correct or mitigate any weaknesses discovered during such testing, at no additional cost to the Government to correct Contractor/subcontractor systems and outsourced services.

(f) *Prohibition of installation and use of personally-owned or Contractor-owned equipment or software on VA networks.* VA prohibits the installation and use of personally-owned or Contractor/subcontractor-owned equipment or software on VA networks. If non-VA owned equipment must be used to fulfill the requirements of a contract, it must be stated in the service agreement, PWS, SOW or contract. All of the security controls required for government furnished equipment (GFE) must also be utilized in approved other equipment (OE) at the Contractor's expense. All remote systems must be equipped with, and use, a VA-approved antivirus (AV) software and a personal (host-based or enclave based) firewall that is configured with a VA-approved configuration. Software must be kept current, including all critical updates and patches. Owners of approved OE are responsible for providing and maintaining the anti-viral software and the firewall on the non-VA owned OE.

(g) *Disposal or return of electronic storage media on non-VA leased or non-VA owned IT equipment.* All electronic storage media used on non-VA leased or non-VA owned IT equipment that is used to store, process, or access VA information must be handled in adherence with NIST 800–88, Rev. 1, ''Guidelines for Media Sanitization,'' and VA Directive 6500, VA Cybersecurity Program, paragraph 2(b)(5), Media Sanitization including upon—

(1) Completion or termination of the contract; or

(2) Disposal or return of the IT equipment by the Contractor/subcontractor or any person acting on behalf of the Contractor/subcontractor, whichever is earlier. Media (*e.g.,* hard drives, optical disks, CDs, back-up tapes) used by the Contractors/subcontractors that contain VA information must be returned to the VA for sanitization or destruction or the Contractor/subcontractor must self-certify that the media has been disposed of per VA Handbook 6500.1 requirements. This must be completed within 30 days of termination of the contract.

(h) *Bio-Medical devices and other equipment or systems.* Bio-Medical devices and other equipment or systems containing media (*e.g.,* hard drives, optical disks) with VA sensitive information will not be returned to the Contractor at the end of lease, for trade-in, or other purposes. For purposes of these devices and protection of VA sensitive information the devices may be provided back to the Contractor under one of three scenarios—

(1) The Contractor must accept the system without the drive;

(2) A spare drive must be installed in place of the original drive at time of turn-in if VA's initial medical device purchase included a spare drive; or

(3) The Contractor may request reimbursement for the drive at a reasonable open market replacement cost to be separately negotiated by the Contracting Officer and the Contractor at time of contract closeout.

(End of clause)

■ 23. Section 852.239–74 is added to read as follows:

**852.239–74 Security Controls Compliance Testing.**

As prescribed in 839.106–70(d), insert the following clause:

**Security Controls Compliance Testing (Feb 2023)**

On a periodic basis, VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security and privacy controls implemented by the Contractor under the clauses contained within the contract. With 10 working-days' notice, at the request of the government, the Contractor must fully cooperate and assist in a government-sponsored security controls assessment at each location wherein VA information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of VA, including those initiated by the Office of Inspector General. The government may conduct a security control assessment on shorter notice, to include unannounced assessments, as determined by VA in the event of a security incident or at any other time.

(End of clause)

■ 24. Section 852.239–75 is added to read as follows:

**852.239–75 Information and Communication Technology Accessibility Notice.**

As prescribed in 839.203–70(a), insert the following provision:

**Information and Communication Technology Accessibility Notice (Feb 2023)**

(a) Any offeror responding to this solicitation must comply with established VA Information and Communication Technology (ICT) (formerly Electronic and Information (EIT)) accessibility standards. Information about Section 508 is available at *http://www.section508.va.gov/.*

(b) The Section 508 accessibility standards applicable to this solicitation are stated in the clause at 852.239–75, Information and Communication Technology Accessibility. In order to facilitate the Government's determination whether proposed ICT supplies meet applicable Section 508 accessibility standards, offerors must submit appropriate VA Section 508 Checklists, in accordance with the checklist completion instructions. The purpose of the checklists is to assist VA acquisition and program officials in determining whether proposed ICT supplies, or information, documentation and services conform to applicable Section 508 accessibility standards. The checklists allow offerors or developers to self-evaluate their supplies and document—in detail—whether they conform to a specific Section 508 accessibility standard, and any underway remediation efforts addressing conformance issues.

(c) Respondents to this solicitation must identify any exception to Section 508 requirements. If an offeror claims its supplies or services meet applicable Section 508 accessibility standards, and it is later determined by the Government, *i.e.,* after award of a contract or order, that supplies or services delivered do not conform to the described accessibility standards, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its expense.

(End of provision)

■ 25. Section 852.239–76 is added to read as follows:

**852.239–76 Information and Communication Technology Accessibility.**

As prescribed in 839.203–70(b), insert the following clause:

**Information and Communication Technology Accessibility (Feb 2023)**

(a) All information and communication technology (ICT) (formerly referred to as electronic and information technology (EIT)) supplies, information, documentation and services support developed, acquired, maintained or delivered under this contract or order must comply with the ''Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards'' (*see* 36 CFR part 1194). Information about Section 508 is available at *http://www.section508.va.gov/.*

(b) The Section 508 accessibility standards applicable to this contract or order are identified in the specification, statement of work, or performance work statement. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(c) The Section 508 accessibility standards applicable to this contract are: ____ [*Contracting Officer: insert the applicable Section 508 accessibility standards*].

(d) In the event of a modification(s) to this contract or order, which adds new EIT supplies or services or revises the type of, or specifications for, supplies or services, the Contracting Officer may require that the Contractor submit a completed VA Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(e) If this is an Indefinite-Delivery type contract, a Blanket Purchase Agreement or a Basic Ordering Agreement, the task/delivery order requests that include ICT supplies or services will define the specifications and

accessibility standards for the order. In those cases, the Contractor may be required to provide a completed VA Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the provided documentation, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(End of clause)

[FR Doc. 2023–00586 Filed 1–24–23; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Parts 107, 110, 171, 172, 173, 174, 175, 176, 177, 178, and 180

**[Docket No. PHMSA–2021–0091 (HM–260B)]**

**RIN 2137–AF56**

### Hazardous Materials: Editorial Corrections and Clarifications; Correction

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration is correcting the final rule that appeared in the **Federal Register** on December 27, 2022. The final rule made editorial revisions and clarifications to the hazardous materials regulations including the hazardous materials table. The corrections address several errors to the hazardous material entries in the hazardous materials table.

**DATES:** This correction is effective January 26, 2023.

**FOR FURTHER INFORMATION CONTACT:** Yul B. Baker Jr., Standards and Rulemaking Division, at 202–366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Need for Correction

The Pipeline and Hazardous Materials Safety Administration (PHMSA) published final rule HM–260B [1] to correct editorial errors and improve the clarity of certain provisions in PHMSA's program and procedural regulations and in the Hazardous Materials Regulations (HMR; 49 Code of Federal Regulations parts 171–180). The intended effect of the rulemaking was to enhance accuracy and reduce misunderstandings of the HMR. The changes in the final rule included numerous amendments to the § 172.101 Hazardous Materials Table (HMT). Unfortunately, the amendments to the table entries for various hazardous materials introduced new unintended errors that PHMSA is correcting in this notice. The unintended errors are summarized below.

*UN2258, 1,2-Propylenediamine:* In HM–260B, PHMSA removed special provision A6 from column (7) of the § 172.101 HMT for several hazardous materials including ''UN2258, 1,2-Propylenediamine.'' Special provision A6 was removed because it had been inadvertently added back to the § 172.101 HMT when making unrelated changes to entries in final rule HM–219C.[2] UN2258, 1,2-Propylenediamine is a Class 8 corrosive liquid material that also has a secondary Class 3 flammable hazard. Thus, in column (6) of the table, the codes ''8'' and ''3'' are specified for the hazard labels required for a package containing this material. However, in HM–260B, we inadvertently omitted reference to the ''3'' from column (6). The absence of the ''3'' will create uncertainty for shippers and carriers of ''UN2258, 1,2-Propylenediamine'' as to whether a Class 3 label is required on a package containing this material. To meet the original intent of HM–260B to enhance accuracy and reduce misunderstandings of the HMR, PHMSA is correcting this error in this notice. *See* Section III. Corrections.

*Vessel stowage codes:* In HM–260B, PHMSA also made several revisions to correct inadvertent omissions of vessel stowage codes from column (10B) to the § 172.101 HMT for the entries ''UN1783, Hexamethylenediamine solution, 8, III,'' ''UN1788, Hydrobromic acid, *with not more than 49 percent hydrobromic acid,*'' and ''UN1740, Hydrogendifluoride, solid, n.o.s., 8, III.'' Column (10B) assigns specific codes for the stowage and handling requirements for specific hazardous materials transported by vessel. In HM–219C, PHMSA had inadvertently omitted stowage code ''52'' for the Packing Group (PG) III entry for ''Hexamethylenediamine solution'' and stowage codes ''53'' and ''58'' for the PG III entry for ''Hydrogendifluoride, solid, n.o.s,'' when making unrelated changes to these entries to specify reference citations for authorized packaging exceptions.

Stowage code ''52'' means stow ''separated from'' acids. Stowage codes ''53'' and ''58'' mean stow ''separated from'' alkaline compounds and stow ''separated from'' cyanides, respectively. These stowage codes are important to ensure proper segregation between acids and both amines and cyanides. Amines react dangerously with acids and evolving heat, and the heat of reaction has the potential to generate corrosive vapors. Cyanides react with acids to generate toxic vapors. PHMSA attempted to add the respective stowage codes back to column (10B) under HM–260B but instead added the stowage codes to column (7), which assigns special provisions applicable to certain § 172.101 HMT entries. More specifically, stowage code ''52'' was added to both column (7) and column (10B) for ''Hexamethylenediamine solution, II'' and stowage codes ''53'' and ''58'' were added to column (7) and not column (10B) for ''Hydrogendifluoride, solid, n.o.s., III.''

Readers may misinterpret unrelated special provisions as being applicable and that the stowage codes that were inadvertently omitted would not apply. For example, special provision ''53'' requires packages to display a subsidiary risk label ''EXPLOSIVE'' along with the subsidiary hazard indicated in the shipping description. If ''53'' were to remain in column (7) for the PG III entry of ''Hexamethylenediamine solution''—which is a corrosive material that does not have an explosive hazard—persons would be mischaracterizing the hazard for the material.

Additionally, in final rule HM–215O,[3] PHMSA inadvertently omitted stowage codes ''53'' and ''58'' for the entry ''UN1788, Hydrobromic acid, *with not more than 49 percent hydrobromic acid.*'' PHMSA had made numerous changes to the stowage codes assigned to hazardous materials in the § 172.101 HMT for consistency with the International Maritime Dangerous Goods (IMDG) Code for regulation of hazardous material transported by vessel including for the companion entry ''UN1788, Hydrobromic acid, *with more than 49 percent hydrobromic acid.*'' The IMDG Code Dangerous Goods List has just one table entry for ''UN1788, Hydrobromic acid,'' but

[1] 87 FR 79752 (Dec. 27, 2022).

[2] 85 FR 75680 (Nov. 25, 2020).

[3] 85 FR 27810 (May 11, 2020).

PHMSA splits it into two hazardous materials descriptions because of varying safety measures dependent on the mode of transport. For instance, ''UN1788, Hydrobromic acid, *with more than 49 percent hydrobromic acid,*'' is forbidden for transport by air. PHMSA attempted to add the respective stowage codes to column (10B) of the § 172.101 HMT to the ''not more than'' entry of UN1788 but inadvertently omitted the ''not'' from the hazardous materials description effectively making the changes apply to the ''more than'' entry of UN1788. PHMSA also inadvertently omitted stowage code ''8'' in the process. If these errors remain uncorrected, readers may misinterpret the provisions that apply to the ''more than'' entry as now applying to the ''not more than'' entry and that the missing stowage codes would not apply when transporting this material. To meet the intent of HM–260B to enhance accuracy and reduce misunderstandings of the HMR, PHMSA is correcting these errors in this notice. *See* Section III. Corrections.

## II. Regulatory Analyses and Notices

### *A. Statutory/Legal Authority*

Statutory authority for this correction notice is provided by the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*). The Secretary delegated the authority granted in this law to the PHMSA Administrator at 49 CFR 1.97(b).

PHMSA finds it has good cause to make the corrections without notice and comment pursuant to Section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 551, *et seq.*). Section 553(b)(B) of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As explained above, the changes to the text of the final rule document provided in this notice consist of corrections to preamble discussion of § 172.101 HMT and corrections to the regulatory text in the amendatory instruction for changes to § 172.101 HMT. The publication of this correction notice is needed to ensure the accuracy and reduce misunderstanding of unintended changes or omissions to § 172.101 HMT.

The January 26, 2023, effective date of the revisions contained in this notice is authorized under both Section 553(d)(1) and (3) of the APA. Section 553(d)(1) provides that a rule should take effect ''not less than 30 days'' after publication in the **Federal Register** except for ''a substantive rule which grants or recognizes an exemption or relieves a restriction,'' while Section 553(d)(3) allows for earlier effectiveness for good cause found by the agency and published within the rule. 5 U.S.C. 553(d)(1), (3). ''The purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *F.C.C.,* 78 F.3d 620, 630 (D.C. Cir. 1996). Since this final rule has not yet taken effect, the impact on affected parties is minimal and such parties will not be adversely impacted by the shortened period before the correction becomes effective. The corrections in this notice accurately represent the intended changes to the § 172.101 HMT in the final rule and, in accordance with 5 U.S.C. 553(d)(1), are effective January 26, 2023. Moreover, PHMSA finds that good cause under Section 553(d)(3) supports making the revisions effective January 26, 2023, because the corrections contained in this notice are entirely consistent with the final rule—which itself was published on December 27, 2022—and helps promote accuracy and understanding of the § 172.101 HMT requirements prior to the January 26, 2023, effective date.

### *B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This notice has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 (''Regulatory Planning and Review'') and DOT Order 2100.6A (''Rulemaking and Guidance Procedures''); therefore, this notice has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. PHMSA finds that the corrections in the notice (in all respects consistent with the final rule) neither impose incremental compliance costs nor adversely affect safety.

### *C. Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires agencies to review regulations to assess their impact on small entities unless the agency head certifies that a rulemaking will not have a significant economic impact on a substantial number of small entities including small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses when possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') [4] requires agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act and to ''thoroughly review draft rules to assess and take appropriate account of the potential impact'' of the rules on small businesses, governmental jurisdictions, and small organizations. DOT posts its implementing guidance on a dedicated web page.[5]

The final rule was developed in accordance with Executive Order 13272 and with DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act and ensure that potential impacts of draft rules on small entities are properly considered. There are no costs to small entities associated with the final rule. The final rule made non-substantive changes that do not impose new requirements, so there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations. This notice similarly does not impose new requirements but makes corrections to errors in the final rule document in the amendments to the § 172.101 HMT that if left uncorrected would be inaccurate and cause misunderstanding by stakeholders as to what requirements apply. Consequently, PHMSA certifies that neither the final rule nor this notice has a significant economic impact on a substantial number of small entities.

### *D. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), no person is required to respond to any information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of 5 CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. The corrections in this notice impose no new or revised information collection.

### *E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501, *et seq.*) requires agencies to assess the effects of

[4] 67 FR 53461 (Aug. 16, 2002).

[5] DOT, ''Rulemaking Requirements Related to Small Entities,'' *https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities* (last accessed June 17, 2021).

federal regulatory actions on state, local, and tribal governments, and the private sector. For any final rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, or by the private sector of $100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the federal mandate. The final rule did not impose unfunded mandates under the UMRA and this notice to correct errors in the final rule document also does not impose unfunded mandates. It does not result in costs of $100 million or more in 1996 dollars to either state, local, or tribal governments, or to the private sector in any one year and is the least burdensome alternative that achieves the objective of the rule.

*F. National Environmental Policy Act*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) requires federal agencies to consider the consequences of federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment. DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts,'' establishes departmental procedures for evaluating environmental impacts under NEPA and its implementing regulations. The purpose of the final rule was to introduce non-substantive changes that do not impose new requirements in order to improve accuracy and understanding of the HMR. The corrections to the final rule in this notice similarly do not impose new requirements. Therefore, PHMSA has determined that implementing this final rule will not significantly impact the quality of the human environment.

*G. Executive Order 13132*

The final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') [6] and its implementing Presidential Memorandum (''Preemption'').[7] Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have ''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.'' The corrections in this notice are consistent with, and facilitate compliance with, the final rule, and do not have any substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government beyond what was accounted for in the final rule. It does not contain any provision that imposes any substantial direct compliance costs on state and local governments, nor any new provision that preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*H. Environmental Justice*

Executive Orders 12898 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''),[8] 13985 (''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government''),[9] 13990 (''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis''),[10] 14008 (''Tackling the Climate Crisis at Home and Abroad'') [11] and DOT Order 5610.2C (''Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects of their programs, policies, and activities on minority populations, low-income populations, and other underserved and disadvantaged communities.

PHMSA evaluated the final rule under the above Executive Orders and DOT Order 5610.2C and did not expect the final rule to cause disproportionately high and adverse human health and environmental effects on minority, low-income, underserved, and other disadvantaged populations and communities. The final rule was facially neutral and national in scope; it was neither directed toward a particular population, region, or community, nor was it expected to adversely impact any particular population, region, or community. Since PHMSA did not expect the final rule to adversely affect the safe transportation of hazardous materials generally, PHMSA does not expect the corrections to the final rule in this notice to involve disproportionately high adverse risks for minority populations, low-income populations, or other underserved and other disadvantaged communities.

*I. Executive Order 13175*

The final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') [12] and DOT Order 5301.1 (''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes''). Because none of the corrections have Tribal implications or impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

Executive Order 13175 and DOT Order 5301.1 require DOT Operating Administrations to assure meaningful and timely input from Indian Tribal government representatives in the development of rules that significantly or uniquely affect tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Native American Tribes. PHMSA assessed the impact of this final rule and determined that it did not significantly or uniquely affect tribal communities or Native American Tribal governments. The changes to the HMR as written in the final rule are facially neutral and have broad, national scope. PHMSA therefore, expected the final rule not to affect tribal communities significantly or uniquely, much less impose substantial compliance costs on Native American Tribal governments or mandate tribal action. Because PHMSA expects the final rule will not adversely affect the safe transportation of hazardous materials generally, PHMSA does not expect it will entail disproportionately high adverse risks for tribal communities. For these reasons, PHMSA concluded the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 do not apply. Similarly, PHMSA does not expect the corrections to the final rule in this notice to affect tribal communities significantly or uniquely, much less impose substantial

[6] 64 FR 43255 (Aug. 10, 1999).

[7] 74 FR 24693 (May 22, 2009).

[8] 59 FR 7629 (Feb. 11, 1994).

[9] 86 FR 7009 (Jan. 20, 2021).

[10] 86 FR 7037 (Jan. 20, 2021).

[11] 86 FR 7619 (Feb. 1, 2021).

[12] 65 FR 67249 (Nov. 6, 2000).

compliance costs on Native American Tribal governments or mandate tribal action.

*J. Executive Order 13609 and International Trade Analysis*

Under Executive Order 13609 (''Promoting International Regulatory Cooperation''),[13] agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The corrections to the final rule in this notice do not impact international trade.

*K. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. The corrections to the final rule do not invoke any voluntary consensus standards, so the National Technology Transfer and Advancement Act of 1995 is not applicable in this case.

[13] 77 FR 26413 (May 4, 2012).

**Corrections**

PHMSA makes corrections to both the preamble and regulatory text of the final rule document. PHMSA is correcting the preamble discussion of changes to column (7) of the § 172.101 HMT by removing discussion of changes to the entries ''UN1783, Hexamethylenediamine solution, 8, III,'' and ''UN1740, Hydrogendifluoride, solid, n.o.s., 8, III,'' which misconstrue the intended vessel storage codes changes as special provision changes and correctly adds to the discussion of column (10B) changes as discussion of vessel stowage code changes for these materials. Additionally, PHMSA is correctly revising the § 172.101 HMT entries for the hazardous materials discussed above in Section I.

In FR Doc. 2022–26960, appearing on page 79752 in the **Federal Register** of Tuesday, December 27, 2022, the following corrections are made:

*Corrections to Preamble*

1. On page 79755, in the 3rd column, beginning at the bullet paragraphs starting with ''For ''UN1740''' and ''For ''UN1783''', the following are correctly removed:

- For ''UN1740, Hydrogendifluoride, solid, n.o.s., 8, PG III,'' PHMSA is correcting an error where special provisions 53 and 58 are missing from column 7.
- For ''UN1783, Hexamethylenediamine solution, 8, PG III, PHMSA is correcting an error where special provision 52 is missing from column 7.

2. On page 79756, in the 2nd column at the end of the first paragraph and before the heading ''Section 172.102,'' the following is correctly added:

- In column (10B) for ''UN1740, Hydrogendifluoride, solid, n.o.s., 8, PG III,'' stowage codes ''53'' and ''58'' are missing. PHMSA inadvertently omitted these stowage codes when making changes to this entry in HM–219C to allow packaging exceptions. Stowage code ''53'' provision means stow ''separated from'' alkaline compounds and stowage code ''58'' provision means stow ''separated from'' cyanides. PHMSA is amending the HMT to add the stowage codes back to column (10B). This amendment will ensure that this material is properly stowed for safe vessel transport.
- In column (10B) for ''UN1783, Hexamethylenediamine solution, 8, PG III,'' stowage code ''52'' is missing. PHMSA inadvertently omitted this stowage code when making changes to this entry in HM–219C to allow packaging exceptions. Stowage code ''52'' provision means stow ''separated from'' acids. PHMSA is amending the HMT to add the stowage code back to column (10B). This amendment will ensure that this material is properly stowed for safe transport.

*Correction to Regulations*

**§ 172.101 [Corrected]**

■ 3. In the amendments to § 172.101, in the table, make the following corrections:

■ a. On page 79769, correctly revise the entry for ''Hexamethylenediamine solution'';

■ b. On page 79769, remove the entry for ''Hydrobromic acid, with more than 49 percent hydrobromic acid'' and correctly add in its place an entry for ''Hydrobromic acid, with not more than 49 percent hydrobromic acid'';

■ c. On page 79769, correctly revise the entry for ''Hydrogendifluoride, solid, n.o.s.''; and

■ d. On page 79770, correctly revise the entry for ''1,2 Propelenyamine''.

The corrections read as follows:

## § 172.101 HAZARDOUS MATERIALS TABLE

| Symbols | Hazardous materials descriptions and proper shipping names | Hazard class or division | Identification numbers | PG | Label codes | Special provisions (§ 172.102) | (8) Packaging (§ 173.***) | | (9) Quantity limitations (see §§ 173.27 and 175.75) | | | (10) Vessel stowage | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Exceptions | Non-bulk | Bulk | Passenger aircraft/rail | Cargo aircraft only | Location | Other |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8A) | (8B) | (8C) | (9A) | (9B) | (10A) | (10B) |
| | * | | * | | * | * | * | | * | * | | | |
| | Hexamethylenediamine solution ..... | 8 | UN1783 | II | 8 ..... | IB2, T7, TP2 ..... | 154 ..... | 202 ..... | 242 ..... | 1 L ..... | 30 L ..... | A | 52 |
| | | | | III | 8 ..... | IB3, T4, TP1 ..... | 154 ..... | 203 ..... | 241 ..... | 5 L ..... | 60 L ..... | A | 52 |
| | * | | * | | * | * | * | | * | * | | | |
| | Hydrobromic acid, *with not more than 49 percent hydrobromic acid.* | 8 | UN1788 | II | 8 ..... | A3, B2, B15, IB2, N41, T7, TP2. | 154 ..... | 202 ..... | 242 ..... | 1 L ..... | 30 L ..... | C | 53, 58 |
| | | | | III | 8 ..... | A3, IB3, T4, TP1 ..... | 154 ..... | 203 ..... | 241 ..... | 5 L ..... | 60 L ..... | C | 8, 53, 58 |
| | * | | * | | * | * | * | | * | * | | | |
| | Hydrogendifluoride, solid, n.o.s. ..... | 8 | UN1740 | II | 8 ..... | IB8, IP2, IP4, N3, N34, T3, TP33. | 154 ..... | 212 ..... | 240 ..... | 15 kg ..... | 50 kg ..... | A | 25, 40, 52, 53, 58 |
| | | | | III | 8 ..... | IB8, IP3, N3, N34, T1, TP33. | 154 ..... | 213 ..... | 240 ..... | 25 kg ..... | 100 kg ..... | A | 25, 40, 52, 53, 58 |
| | * | | * | | * | * | * | | * | * | | | |
| | 1,2-Propylenediamine ..... | 8 | UN2258 | II | 8, 3 .. | A3, IB2, N34, T7, TP2. | 154 ..... | 202 ..... | 243 ..... | 1 L ..... | 30 L ..... | A | 40, 52 |
| | * | | * | | * | * | * | | * | * | | | |

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Issued in Washington, DC, on January 19, 2023, under the authority delegated in 49 CFR 1.97.

**Tristan H. Brown,**

*Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2023–01327 Filed 1–24–23; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R8–ES–2020–0074; FF09E22000 FXES11130900000 201]**

**RIN 1018–BE73**

## Endangered and Threatened Wildlife and Plants; Removing Five Species That Occur on San Clemente Island From the Federal Lists of Endangered and Threatened Wildlife and Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are removing the San Clemente (SC) Bell's sparrow (*Artemisiospiza belli clementeae*) (formerly known as the SC sage sparrow, *Amphispiza belli clementeae*), San Clemente Island (SCI) bush-mallow (*Malacothamnus clementinus*), SCI paintbrush (*Castilleja grisea*), SCI lotus (*Acmispon dendroideus* var. *traskiae*), and SCI larkspur (*Delphinium variegatum* ssp. *kinkiense*) from the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists). The bird species and four plant species occur only on SCI, one of the California Channel Islands off the southern coast of California. The delistings are based on our evaluation of the best available scientific and commercial information, which indicates that the status of each species has improved and threats to the species have been eliminated or reduced to the point that the species have recovered and no longer meet the definitions of either endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Accordingly, the protections provided by the Act will no longer apply to these species.

**DATES:** This rule is effective February 24, 2023.

**ADDRESSES:** This final rule, supporting documents used in preparing this rule, the post-delisting monitoring plans, and the comments received on the proposed rule are available for public inspection at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0074.

**FOR FURTHER INFORMATION CONTACT:** Scott Sobiech, Field Supervisor, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760–431–9440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access 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:**

### Executive Summary

*Why we need to publish a rule.* Under the Act, a species may be removed from the Federal Lists of Endangered and Threatened Wildlife and Plants (*i.e.,* ''delisted'') if it is determined that the species has recovered and no longer meets the definition of an endangered species or a threatened species. Delisting a species can only be completed by issuing a rule.

*What this document does.* This rule removes the SC Bell's sparrow (*Artemisiospiza belli clementeae*) (formerly known as the SC sage sparrow, *Amphispiza belli clementeae*), SCI bush-mallow (*Malacothamnus clementinus*), SCI paintbrush (*Castilleja grisea*), SCI lotus (*Acmispon dendroideus* var. *traskiae*), and SCI larkspur (*Delphinium variegatum* ssp. *kinkiense*) from the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) based on the species' recovery.

*The basis for our action.* Under the Act, we may determine that a species is an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same factors in delisting a species.

We have determined that the five SCI species are not in danger of extinction now nor are they likely to become so in the foreseeable future based on a comprehensive review of their status and listing factors. Specifically, our recent review indicated that the Navy's successful removal of nonnative herbivores (goats, sheep, pigs, cattle, mule deer) led to recovery of vegetation in areas of severely degraded habitat on SCI and to the recovery of these five species to the point that they no longer require protections under the Act. Accordingly, the species no longer meet the definition of endangered or threatened species under the Act.

We developed species status assessment (SSA) reports for the five species, in cooperation with an SSA team and the Navy. The SSA reports represent a compilation of the best scientific and commercial data available concerning the status of these species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

*Peer review and public comment.* In each of the five respective SSAs, we evaluated the species' needs, current conditions, and future conditions to inform our May 5, 2021, proposed rule (86 FR 23882). We sought peer review from independent specialists and evaluated their comments to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We considered all comments and information we received during the public comment period on the proposed delisting rule and the draft PDM plan when developing this final rule.

### Previous Federal Actions

On May 5, 2021, we proposed to delist these five SCI species from the Federal Lists of Endangered and Threatened Wildlife and Plants (86 FR 23882). Please refer to that proposed rule for a detailed description of previous Federal actions concerning these species. The proposed rule and supplemental documents are provided at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0074.

### Summary of Changes From the Proposed Rule

On December 9, 2021, following the closing of the public comment period on the proposed rule and while this final rule was being drafted, we received from the U.S. Navy (hereafter, ''Navy'') a draft description of the proposed action and alternatives for the San Clemente Island Training and Testing Environmental Analysis, which identified proposed changes in training activities and proposed designation of new training areas in habitat occupied by the five SCI species. In response to this new information, we coordinated with the Navy to identify appropriate avoidance and minimization measures, and the Navy reaffirmed commitment to

incorporate minimization measures into future training activities (Golumbfskie-Jones 2022, *in litt,* p. 1).

We also refined the analysis of current and future conditions as presented in Version 1.0 of each of the SSAs in response to this new information by including the proposed training areas in the analysis and revising the anticipated erosion and adjacency impact zone at the periphery of assault vehicle maneuver areas (AVMA) and landing zones (LZs). In the proposed rule, under extreme conditions in the future scenarios, we considered that all plants in an entire watershed could be impacted by training if an AVMA occurred in the same watershed. As revised, we instead analyzed impacts to occur up to 500 feet around the areas, as 500 feet more accurately reflects the impacts of training that could extend beyond the boundaries of AVMAs and LZs based on observations of baseline conditions surrounding existing AVMAs and LZs and in consideration of the erosion control measures the Navy will continue to implement. Thus, incorporation of a 500-foot impact zone beyond the boundary of these areas provides a more biologically accurate assessment for future condition, compared to the proposed rule, where we assumed that all plants in the watershed would be lost.

The results of our analysis were incorporated into the respective SSAs, which are available as Version 1.1. Future condition of each species in Version 1.1 of each SSA was assessed using the same methodology as in the original SSAs, with the following expectations: (1) Future military training would be limited to the high-use training footprints identified in the SSA Version 1.1; (2) fire impacts to species considered would occur within the same areas of the island that experienced two or more fires during the period 2007–2018; (3) impacts within high-use training and frequent fire footprints would increase; and (4) impacts outside high-use training and frequent fire footprints would be minimal. No change in the fire footprint (beyond that contemplated in the original SSA) is considered because it is unlikely there will be changes in ignition sources or fire management, and thus future fire patterns should remain comparable to historical fire patterns. As described below, and with the exception of changes made as a result of Navy input, we made no substantive changes to this final rule based on comments received on our proposed rule by Federal and State partners, or based on comments received from the public during the public comment period.

**Summary of Comments and Recommendations**

In our May 5, 2021, proposed rule to delist the five SCI species (86 FR 23882), we requested that all interested parties submit written comments on the proposed delistings and our draft PDM plan by July 6, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed delistings and draft PDM plan. A newspaper notice inviting general public comments was published in the San Diego Union-Tribune (major local newspaper) and also announced using online and social media sources. We received five comments from the public on the proposed rule, and we received no requests for a public hearing. While all of the commenters expressed general views that the five SCI species should remain listed under the Act, none provided substantive information that required changes to this final rule.

**Final Delisting Determination**

*Species Information*

Below, we present a review of the taxonomy, life history, ecology, and overall status of the five SCI species, referencing data where appropriate from the SSAs that were finalized for each of the five species.

*Overview of San Clemente Island*

The five species addressed in this final rule are endemic to SCI, the southernmost island of the California Channel Islands, located 64 miles (mi) (103 kilometers (km)) west of San Diego, California. The island is approximately 56 square mi (145 square km, 36,073 acres (ac), or 14,598 hectares (ha)) (Junak and Wilken 1998, p. 2) and is long and narrow: 21 mi (34 km) long by 1.5 mi (2.4 km) wide at the north end, and 4 mi (6.4 km) wide at the south end (USFWS 1984, p. 5). The island consists of a relatively broad open plateau that slopes gently to the west. Conspicuous marine terraces line the western slope of the island, while steep escarpments drop precipitously to the rocky coastline on the eastern side along the southern 75 percent of its coastline. Many canyons, some of which are up to 500 feet (ft) (152 meters (m)) deep, dissect the southern part of the island. Mount Thirst, the highest point on the island, rises to approximately 1,965 ft (599 m) (Navy 2013a, p. 1.4).

SCI is located in a Mediterranean climatic region with a significant maritime influence. Average monthly temperatures range from 58 degrees Fahrenheit (°F) (14 degrees Celsius (°C)) to 66 °F (19 °C), with a monthly maximum temperature of 72 °F (22 °C) in August and a monthly minimum of 51 °F (10 °C) in December (Navy 2013a, p. 3.11). Average monthly relative humidity varies from 54 to 86 percent depending on location and time of year, and the island experiences dramatic fluctuations in annual rainfall, averaging 6.6 inches (in) (16.8 centimeters (cm)) (Navy 2013a, pp. 3.11, 3.13). Precipitation is received mainly from November through April, with little from May through October. In addition to precipitation, low-level stratiform clouds and fog drip during the typical dry season provide moisture to the SCI ecosystem (Navy 2013a, pp. 3.9, 3.13). The central plateau is characterized mainly by native and nonnative grassland communities. Marine terraces on the western side of the island support maritime desert scrub communities, and the steep eastern escarpment supports grassland and sagebrush communities. Deep canyons that incise both the east and the west sides of the island support limited canyon woodland communities.

*San Clemente Bell's Sparrow*

A thorough review of the taxonomy, life history, and ecology of the SC Bell's sparrow is presented in the SSA report (USFWS 2022a). The SC Bell's sparrow (*Artemisiospiza belli clementeae;* Chesser et al. 2012), formerly called the SC sage sparrow, is a non-migratory subspecies of Bell's sparrow endemic to SCI. It is a grayish-brown-colored sparrow with a small dark breast spot, complete white eye rings, and distinctive white and black malar stripes. It is approximately 5.1–5.9 in (13–15 cm) long, and weighs, on average, 0.59 ounces (16.8 grams) (Martin and Carlson 1998, p. 2; Turner et al. 2005, p. 27).

The SC Bell's sparrow was once close to extinction, with a low of 38 individual adults reported in 1984 (Hyde 1985, p. 30). The population was estimated to be 316 in 1981, 38 in 1984, and 294 in 1997 (Beaudry et al. 2003, pp. 1–2), based on transect surveys on the marine terraces of the west shore of the island. In the period 1999–2011, transect surveys continued predominantly in boxthorn habitat on the west shore, and population estimates ranged from 452 to 1,544 SC Bell's sparrows (USFWS 2022b, p. 27). As the native shrub habitat recovered following the removal of the nonnative grazing and browsing animals, the distribution of SC Bell's sparrow

expanded on SCI (Meiman et al. 2019, pp. 2–4). Observations of Bell's sparrows in areas of the island outside the marine terraces on the west shore increased. In 2012, breeding season survey methodology was modified (Meiman et al. 2019, pp. 3–4) to include survey plots randomly distributed throughout the island. Using this approach, new plots are selected for survey each year. Implementation of this survey methodology resulted in an island-wide estimate of 2,267 Bells' sparrow territories (4,534 adult sparrows) in 2013. The population estimates ranged from 4,194 to 7,656 adult Bell's sparrows in the period 2013–2018 (USFWS 2022a, p. 25). While the SC Bell's sparrow is now distributed widely across the island (see figure 1, below), its density varies greatly spatially and among vegetation types. SC Bell's sparrows may be found in some habitat mapped as grasslands; however, many grassland areas do not support SC Bell's sparrows, likely due in part to the lack of shrub cover. Recent estimates of potential available habitat have increased from approximately 4,196 ha (10,369 ac) in 2009 (USFWS 2009, p. 8) to approximately 13,132 ha (32,449 ac) (Meiman et al. 2018, p. 5).

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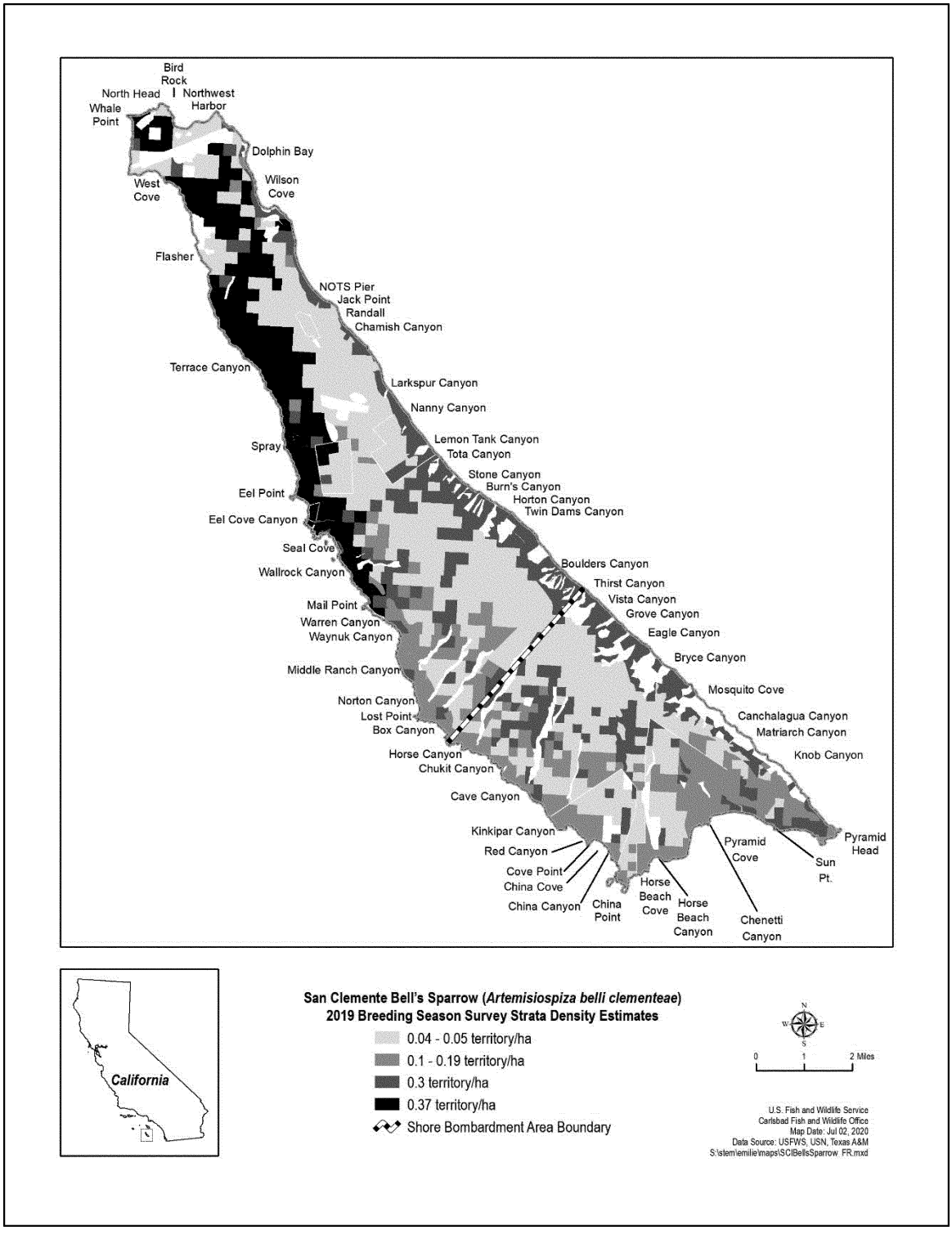


Figure 1—Map showing distribution of San Clemente Bell's sparrow on San Clemente Island, CA.

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Boxthorn-dominated plant communities, particularly along the northwest shoreline and marine terraces, support high-quality habitat that provided refugia to the Bell's sparrow when the population was lower. Boxthorn habitat along the northwestern shoreline and marine territories remains densely populated, supporting a significant percentage of the SC Bell's sparrow population. This area is particularly important to the species. In addition, moderate to high population densities are also found in sagebrush and shrub habitat along the steep eastern slope. SC Bell's sparrows are present in significantly lower densities in mixed shrub, cactus, and grassland (grass/herb) habitats along the central plateau (Meiman et al. 2018, p. 18).

SC Bell's sparrows inhabit most plant communities on SCI, including maritime desert scrub in *Lycium* (boxthorn) phase, *Opuntia* (prickly pear) phase, and *Cylindropuntia* (cholla) phase; maritime sage scrub; canyon shrubland/woodland; and grasslands (USFWS 2022a, pp. 20–21). Within these plant communities, SC Bell's sparrows show an affinity for areas dominated by shrubs and cacti (*Opuntia* sp.). SC Bell's sparrows demonstrate a positive association with structural shrub cover (Meiman et al. 2015, p. 33), as they typically use shrubs for nesting substrate and use the gaps between and area underneath shrubs for foraging. The abundance of shrubs, including boxthorn, has been positively correlated with sparrow density (Turner 2009, pp. 53–54). High grass cover has been correlated with lower sparrow densities and larger territory sizes, which may indicate that grasses are not likely important resources during the nesting season (Turner 2009, pp. 53–54).

The SC Bell's sparrow is a ground gleaner and eats available insects and spiders, and seeds taken from the ground and low vegetation. During the winter, SC Bell's sparrows feed on prickly pear and cholla cactus fruit and on moths (Hyde 1985, p. 24). The initiation of breeding activity and the length of the nesting season appear to be tied to precipitation patterns (Kaiser et al. 2007, pp. 48–49; Meiman et al. 2018, p. 36). Breeding activity usually peaks in March and April and lasts through late June or July. Clutch size ranges from one to five eggs, with asynchronous hatching after 12 to 13 days of incubation conducted mostly by the female (Martin and Carlson 1998, p. 9). SC Bell's sparrows can breed during their first year. A pair can produce multiple clutches, with some pairs producing multiple successful broods in favorable years (Martin and Carlson 1998, p. 9; Kaiser et al. 2008, p. 36). SC Bell's sparrows express site fidelity each nesting season, and juveniles disperse from the natal area during their first winter.

Amounts and distribution of rainfall affect the timing and extent of vegetation growth and flowering, which likely affects resource availability for SC Bell's sparrows. During drought years, SC Bell's sparrows may not reproduce at all, or a subset of the population may suppress breeding (Kaiser et al. 2007, p. iv; Stahl et al. 2010, p. 48; Meiman et al. 2019, p. 35), which can result in depressed populations following prolonged periods of severe drought. Less severe or shorter duration dry periods, however, do not appear to result in significant population changes, as evidenced by recent dry periods and relatively stable SC Bell's sparrow population estimates. SC Bell's sparrows appear to respond to favorable precipitation patterns and resulting conditions by producing multiple clutches, which typically drive population numbers up in years that follow ''good'' precipitation years (Kaiser et al. 2007, p. iv; Stahl et al. 2010, p. 50).

*San Clemente Island Bush-Mallow*

A thorough review of the taxonomy, life history, and ecology of the SCI bush-mallow is presented in the SSA report (USFWS 2022b). SCI bush-mallow (*Malacothamnus clementinus*) is a rounded shrub in the Malvaceae (mallow family) (Slotta 2012; 77 FR 29078, p. 29080, May 16, 2012). Plants are generally 2.3 to 3.3 ft (0.7 to 1 m) tall with numerous hairy branched stems arising from the base of the plant (Munz and Johnston 1924, p. 296; Munz 1959, pp. 122–125; Bates 1993, p. 752). Flowers are clustered in the uppermost leaf axils, forming interrupted spikes 3.9 to 7.9 in (10 to 20 cm) long (Munz 1959, p. 125). Flowers are bisexual and variously described as having pink or white and fading lavender petals (Munz and Johnston 1924, p. 296; Bates 1993, p. 752).

The historical range and distribution of SCI bush-mallow on SCI is unknown because botanical studies were not conducted on the island prior to the introduction of ungulates beginning in the 1800s (Kellogg and Kellogg 1994, p. 4). At the time of listing, one site at Lemon Tank Canyon on the eastern side of the island and two additional locations of two to three small plants in China Canyon on the southern end of the island were known (42 FR 40682, p. 40683, August 11, 1977; USFWS 1984, p. 48). Since listing, new locations of SCI bush-mallow have been discovered among the generally southwesterly facing coastal terraces and their associated escarpments in the southern and middle regions of SCI (Junak and Wilken 1998, pp. 1–416, Geographic Information System (GIS) data; Junak 2006, pp. 1–176, GIS data; Tierra Data Inc. 2008, pp. 1–24, appendices and GIS data; SERG 2010a and 2010b, GIS data). Most of the known locations occur throughout the southwestern region of the island. The main southern distribution of SCI bush-mallow is disconnected from the Lemon Tank Canyon locality by approximately 4 mi (6.4 km). Many of these new locations have been documented since feral mammals were removed, suggesting that plants may have reemerged from underground stems that survived grazing by feral herbivores (Junak 2006, pers. comm. in 77 FR 29078, p. 29086, May 16, 2012), although experts doubt that rhizomes would be able to store enough energy to sprout after a long period of dormancy without sending up shoots in the interim (Munson 2022, pers. comm.; Rebman 2019, pers. comm.; Morse 2020, pers. comm.).

The current abundance and distribution of SCI bush-mallow is estimated to total approximately 5,611 individuals at 222 locations occupying 15 watersheds (see figure 2, below) (USFWS 2022b, pp. 29–31). Because distinguishing genetically distinct individuals among groups of stems is difficult, counts or estimates of individuals have most often been used collectively to refer to both genetically distinct individuals (genets) and clones (ramets) (USFWS 2022b, p. 26). In the current estimate, individuals refer to individual plants and not necessarily to genetically distinct individuals, since the number of genetically distinct individuals is unknown. Because of access restrictions due to risk of unexploded ordnances, occurrences within areas subject to bombardment have not been assessed recently enough to be included in this estimate but are likely still extant.

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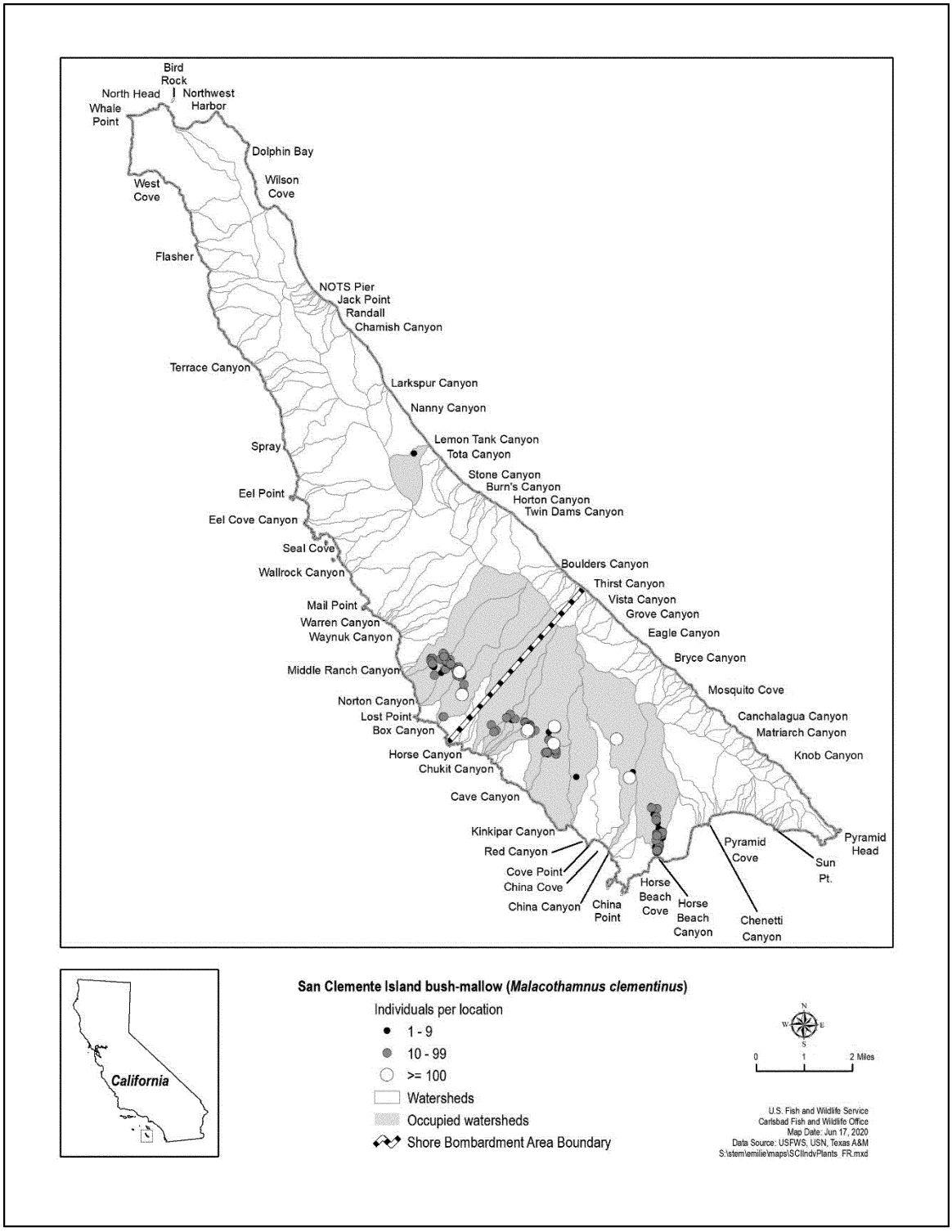


Figure 2—Map showing distribution of San Clemente Island bush-mallow on San Clemente Island, CA.

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SCI bush-mallow occurs in a variety of habitats on SCI. Historically, it was observed on rocky canyon walls and ridges, presumably because foraging goats did not browse those areas. Since removal of nonnative feral ungulates, SCI bush-mallow has been found at the base of escarpments between coastal terraces on the western side of the island within maritime cactus scrub (Navy 2002, pp. D–19, D–20), and it can also occur on low canyon benches and in rocky grasslands. Moisture that collects in rock crevices and at the base of canyon walls and escarpments may provide favorable conditions for this species (Junak 2006, pers. comm. in 77 FR 29078, p. 29094, May 16, 2012). Based on its habitat range on the island and the ease of cultivating the plant, SCI bush-mallow appears to tolerate a broad

range of soil types (USFWS 1984, p. 50). It is often associated with maritime cactus scrub vegetation on coastal flats at the southwestern end of the island (Junak and Wilken 1998, p. 256).

SCI bush-mallow flowers in the spring and summer, typically from March to August (Kearney 1951, p. 115; California Native Plant Society 2011). It is generally thought that SCI bush-mallow is pollinated by insects; potential pollinators incidentally observed in the wild include wasps and butterflies (USFWS 2007c, p. 9). Although no specific pollinator for this species is known, the shape of the flowers suggest that it is not limited to a specific pollinator and instead can be pollinated by different pollinators (Muller and Junak 2011, p. 33).

While each plant can produce large numbers of seeds, recorded seed production in natural occurrences of SCI bush-mallow has been very low (Helenurm 1997, p. 51; Junak and Wilken 1998, p. 291; Helenurm 1999, p. 39). Germination rates in seed trials are also low, only 4 to 35 percent (Evans and Bohn 1987, p. 538; Junak and Wilken 1998, p. 291). Hypotheses for low seed set and germination rates include low pollinator visitation rates, reduced pollinator diversity, partial self-incompatibility (*i.e.,* plants need to be pollinated by a non-closely related individual), limited survey efforts, and that seed germination may be stimulated by fire (USFWS 2022b, pp. 22–23). However, it is difficult to determine the cause of the apparent low reproductive output noted, whether low reproductive output is still an issue currently, and whether fire assists germination.

SCI bush-mallow can reproduce vegetatively, or clonally, by sprouting from rhizomes (Evans and Bohn 1987, p. 538), as well as sexually by seeds, although sexual recruitment is likely low. The ability to spread vegetatively by underground rhizomes results in patches of spatially separate but genetically identical individuals (Evans and Bohn 1987, p. 538). Occurrences are likely a mix of both genetically unique individuals (genets) and clonal individuals (ramets) that are connected underground. Although difficult to discern between ramets and genets in the field, most groups of plants are composed of ramets from an unknown number of genets, consistent with other plant species exhibiting strong clonal growth. Although growth and spread of the population has been thought to be mostly clonal (Muller and Junak 2011, p. 50), evidence of sexual reproduction includes two seedlings identified in the field (by the presence of cotyledons) on a recently burned site in 2014 (Munson 2022, pers. comm.). While the distribution of SCI bush-mallow is much greater than was known at the time of listing, difficulty and confusion with discerning between ramets and genets and low reproductive output create uncertainty about whether it is reproducing sexually or only clonally.

Two different studies of population genetics have been conducted (Helenurm 1997; Helenurm 1999). These genetic assessments along with field observations indicate that overall genetic diversity is low, but there is some level of genetic diversity within and among patches of SCI bush-mallow (*i.e.,* based on these studies, not all individuals are clones in each area). However, due to the limitations of techniques, neither study is conclusive. Genetic diversity is presumed to have declined since the introduction of feral browsers and grazers, but we do not know historical or current levels of genetic diversity or normal rates of sexual versus asexual reproduction, so no comparisons can be made. Overall, genetic diversity within SCI bush-mallow is still very low compared with other island endemic plant taxa (Helenurm 1999, p. 40).

This species may be subject to drought stress to some extent (from 25 to 89 percent of individuals sampled), which may reduce flowering (Muller and Junak 2011, p. 58). This species may be drought deciduous as is a closely related species of bush-mallow, *Malacothamnus fasciculatus,* but there are no physiological studies to support this conjecture; the similar phenology of SCI bush-mallow and its habitat attributes support the suggestion (Muller and Junak 2011, p. 32).

Although no information is available regarding the fire tolerance of SCI bush-mallow, other species in the same genus (*e.g., Malacothamnus fremontii*) rapidly become established after fire (Rundel 1982, p. 86). Seed germination in other species in the genus is stimulated by fire, and there is evidence that fire may also have a positive effect on SCI bush-mallow (Keeley et al. 2005, p. 175). Because of its ability to resprout from rhizomes and the adaptation of other species in the genus to fire, it is thought that SCI bush-mallow is likely resistant to fire and that its seeds may even respond positively to fire (USFWS 2008b, p. 77).

*San Clemente Island Paintbrush*

A thorough review of the taxonomy, life history, and ecology of the SCI paintbrush is presented in the SSA report (USFWS 2022e).

SCI paintbrush (*Castilleja grisea*) is a highly branched perennial subshrub in the broomrape family (Orobanchaceae) endemic to SCI (Chuang and Heckard 1993, p. 1021) and is the only representative of the genus *Castilleja* found on the island (Helenurm et al. 2005, p. 1222). SCI paintbrush is typically 11.5 to 31.5 in (29 to 80 cm) in height and covered with dense white, wooly hairs. Most *Castilleja* species have bisexual flowers disposed in terminal spikes. The flowers of SCI paintbrush are yellow.

SCI paintbrush is thought to have been relatively common on SCI in the 1930s and subsequently declined as a result of unchecked grazing by introduced feral herbivores (Helenurm et al. 2005, p. 1222). The complete historical range of SCI paintbrush on SCI is unknown because botanical studies were not completed before the plant's decline. Herbarium records documented the species on the south and east sides of the island before the time of listing (California Consortium of Herbaria 2019, records for *C. grisea*). By 1963, SCI paintbrush was reported as rare or occasional (Raven 1963, p. 337). Since the complete removal of feral ungulates from SCI by 1992, SCI paintbrush has been detected across the southern two-thirds of the island (Keegan et al. 1994, p. 58; Junak and Wilken 1998, p. 1–416, GIS data; Junak 2006, p. 1–176, GIS data; Tierra Data Inc. 2008, p. 1–24, appendices and GIS data; SERG 2010a and 2010b, GIS data). The current abundance and distribution of SCI paintbrush is estimated to comprise 601 locations totaling 42,104 individuals occupying 87 watersheds (see figure 3, below) (USFWS 2022e, pp. 27–29).

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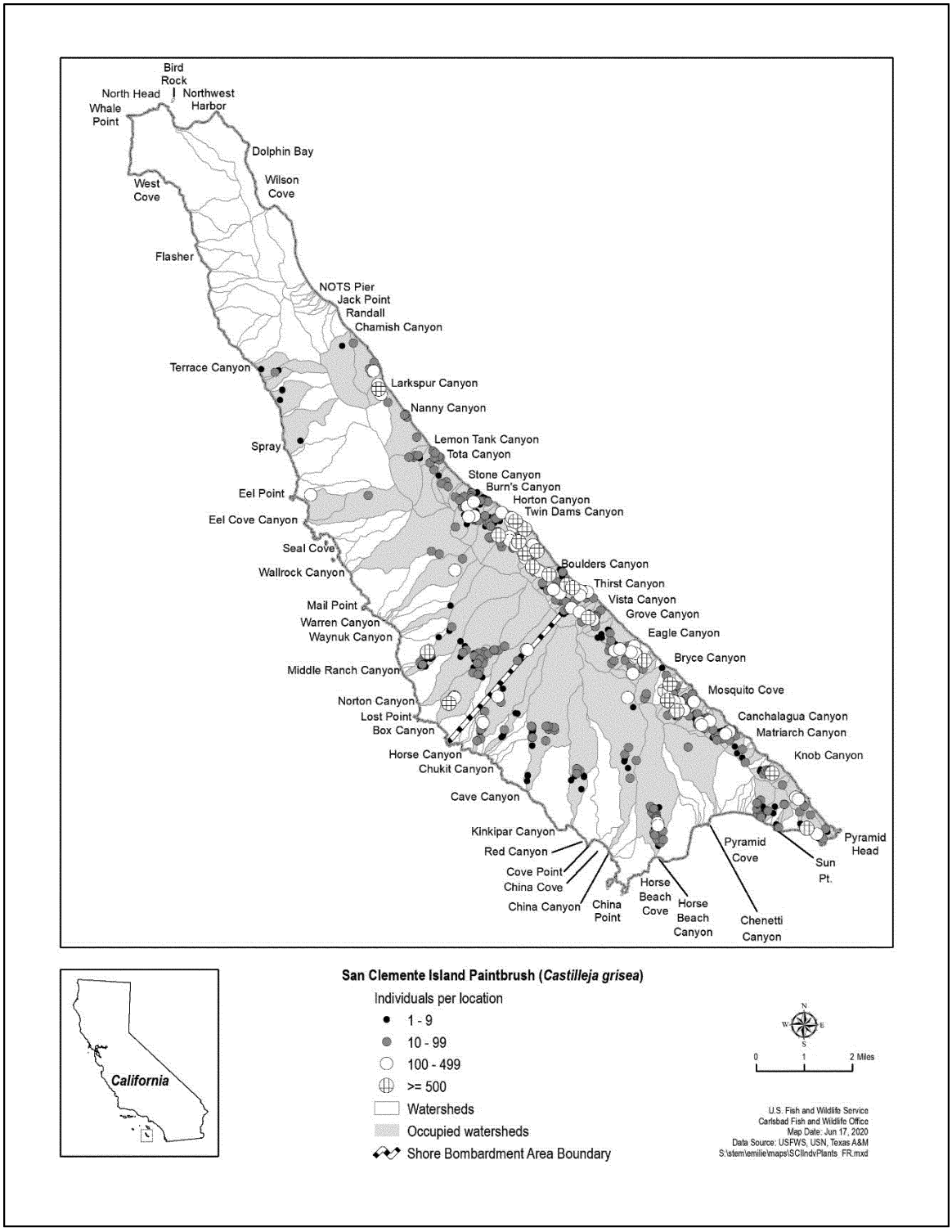


Figure 3—Map showing distribution of San Clemente Island paintbrush on San Clemente Island, CA.

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Over time, the range of SCI paintbrush has expanded, and it now occupies a broad range of habitats across the island. SCI paintbrush is often associated with two major vegetation types: Canyon woodland (which encompasses approximately 696 ac (282 ha)), and maritime desert scrub (which encompasses approximately 6,228 ac (2,520 ha)). Aspect varies widely, but generally plants are found on flats and steep rocky slopes from 0–70 degrees (CNDDB 2019; Navy 2017, p. 11–24; Vanderplank et al. 2019, p. 5), and the species is found almost exclusively on non-clay soils and rocky outcrops (Vanderplank et al. 2019, p. 5). SCI paintbrush can colonize disturbed areas, and the species likely has the potential for further range expansion on SCI

(Navy 2008a, pp. 3.11–3.20; Vanderplank et al. 2019, p. 5).

All members of the genus *Castilleja* are considered hemiparasitic, meaning that its roots are capable of forming parasitic connections to roots of other plants (Heckard 1962, p. 27). Plants within the genus are capable of photosynthesis and can exist without a host, but they are able to derive water, nutrients, and photosynthates from a host plant if present (Heckard 1962, p. 25). Members of the genus *Castilleja* appear to form parasitic connections with a wide range of host plant species from a wide range of families (Heckard 1962, p. 28; Atsatt and Strong 1970, p. 280; Marvier 1996, p. 1399; Adler 2002, p. 2704; Adler 2003, p. 2086; Muller 2005, p. 4). Although studies to verify host-connections have not been done, numerous plant species are associated with SCI paintbrush (Junak and Wilken 1998, p. 82; Muller 2009, pers. comm., in 77 FR 29078, p. 29096, May 16, 2012). The generalist host-selection of *C. grisea* likely aided recovery of this species as the vegetation recovered following the removal of feral browsers and grazers (Muller and Junak 2011, pp. 16–17).

SCI paintbrush typically flowers between February and May, producing yellow bisexual flowers (Chuang and Heckard 1993, pp. 1016–1024; Navy 2013a, p. 3–203). SCI paintbrush is likely self-incompatible (unable to produce viable seed through self-fertilization), as observed in other species of the genus (Carpenter 1983, p. 218; Junak and Wilken 1998, p. 84). Results of a population genetic study were consistent with an outcrossing breeding system (Helenurm et al. 2005, p. 1225). SCI paintbrush is most closely related to, and shares floral traits with, other species in the genus primarily adapted for bee pollination (Chuang and Heckard 1991, p. 658), but both insect and hummingbird pollination of *Castilleja* have been reported (Grant 1994, p. 10409; Junak and Wilken 1998, p. 84).

Although the lifespan of SCI paintbrush is unknown, its larger stature and woodier habit (general appearance or growth form) suggest it may be longer lived, which would be consistent with an estimated lifespan of 5–15 years based on observations made during repeat visits to occupied sites (Munson 2022, pers. comm.). Based on life-history, the persistence of interbreeding groups of plants may depend upon frequent production of seed (Dunwiddie et al. 2001, p. 161) as no evidence of clonal growth has been found (Muller and Junak 2010, p. 42). Population growth is primarily by recruitment from existing populations from plants that emerged from the soil seedbank following removal of feral herbivores or from plants that survived those impacts (Muller and Junak 2010, p. 42). However, the increase in SCI paintbrush's range, along with the discovery of new individuals along trails or near buildings that people frequent (O'Connor 2022, pers. comm.), suggests that the establishment of new population centers may be relatively common. The degree of fire tolerance of SCI paintbrush is unknown. It is not specifically adapted to fire, but it is likely resilient to occasional fires and has been seen to persist in areas after fires, although severe fires can kill plants and reduce numbers of individuals in a location (Muller and Junak 2011, p. 16;; Tierra Data Inc. 2005, p. 80; Vanderplank et al. 2019, p. 13).

*San Clemente Island Lotus*

A thorough review of the taxonomy, life history, and ecology of the San Clemente Island lotus is presented in the SSA report (USFWS 2022d).

SCI lotus (*Acmispon dendroideus* var. *traskiae*) is a semi-woody, flowering subshrub in the legume or pea family (Fabaceae). It is endemic to SCI (Isely 1993, p. 619) and is one of five taxa in the genus *Acmispon* found on the island (Tierra Data Inc. 2005, p. C–8; Brouillet 2008, pp. 388–392).

SCI lotus is typically less than 4 ft (1.2 m) tall with slender erect green branches (Munz 1974, pp. 449–450; USFWS 1984, p. 59; Allan 1999, p. 82). Each leaf has three to five leaflets, each approximately 0.2 to 0.3 in (5 to 9 millimeters (mm)) long (USFWS 1984, p. 59; Allan 1999, p. 82). SCI lotus has small yellow flowers that are bisexual and arranged in one to five flowered clusters on stalks that arise from axils between the stem and leaf of terminal shoots (Junak and Wilken 1998, p. 256). Pistils are initially yellow, turning orange then red as the fruit matures (USFWS 1984, p. 59).

The 1977 listing rule mentioned that SCI lotus occurred at Wilson Cove on the north end of the island, but no other details were available (42 FR 40682, p. 40683, August 11, 1977). In the 1984 recovery plan, SCI lotus were restricted to six ''populations'' associated with rocky areas, with the largest number of plants growing in the Wilson Cove area (USFWS 1984, p. 59). Only a few herbarium specimens of SCI lotus exist, making historical distribution and condition difficult to assess. Based on herbarium records, California Natural Diversity Database (CNDDB) records, and the recovery plan, the historical range includes occurrences in the northern part of the island (Wilson Cove) down to the southern point (Pyramid Head). Since the final removal of all feral herbivores by 1992, the distribution of this taxon has steadily increased (77 FR 29078, p. 29110, May 16, 2012). By 1997, roughly 50 percent of documented occurrences of these plants were found in the vicinity of Wilson Cove, and by 2004, 75 percent of the distribution of this taxon was found beyond this area and extended to the southernmost part of the island (USFWS 2007b, pp. 4–5).

The most recent survey data show the distribution of SCI lotus spans the length of the island from Wilson Cove to the southern tip east of Pyramid Cove, approximately 19 mi (31 km) (Junak and Wilken 1998, p. 261; Junak 2006, Map A–C; Vanderplank et al. 2019, p. 27). The majority of locations tend to be clustered on north-facing slopes on the eastern side of the island (Vanderplank et al. 2019, p. 7). SCI lotus tends to occur in small groups of 10 to 50 individuals (Allan 1999, p. 84). The statuses of some historical locations are unknown because they occur in areas with restricted access, such as due to unexploded ordnances, or have not been surveyed in a long time. Based on repeated surveys within some watersheds, 15 previously occupied watersheds are no longer considered occupied (USFWS 2022d, p. 26). However, the overall number of watersheds in which SCI lotus is documented increased from 4 reported during 1980–1989 surveys, to 50 reported in the period 2010–2014 (USFWS 2022d, p. 21). Despite limitations of the survey data (*e.g.,* not all areas were surveyed during every survey period), the data indicate that the number of individuals and the range of SCI lotus have increased over time, and SCI lotus's current distribution is estimated to be 249 locations within 57 watersheds totaling 20,743 individuals (see figure 4, below) (USFWS 2022d, pp. 24–27).

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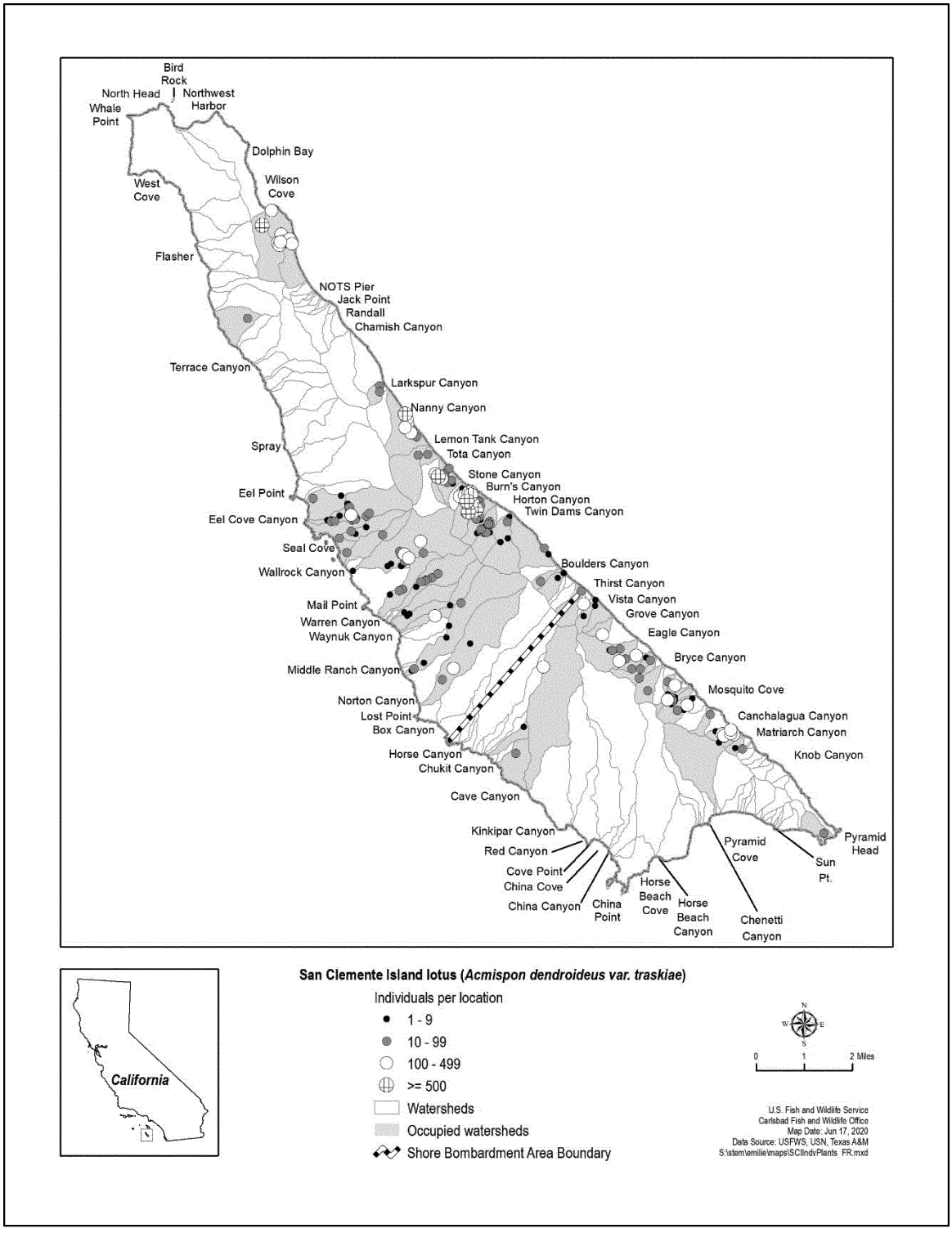


Figure 4—Map showing distribution of San Clemente Island lotus on San Clemente Island, CA.

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SCI lotus establishes on north- and east-facing slopes and ridges at elevations ranging from 25 to 1,400 ft (7.6 to 463 m) and is found in canyon bottoms or along ridgelines (Junak 2006, p. 125). It appears to preferentially establish and grow somewhat colonially around rock outcrops and among large boulders situated in grassland areas and along the interface between grassland and maritime sage scrub (Allan 1999, p. 84; Navy 2002, p. D–9); SCI lotus also readily occupies disturbed sites and locations close to buildings, roads, and pipelines (Navy 2013b, p. 3–201). It occurs on well-drained soils where adequate soil moisture is available to the plant (Junak and Wilken 1998, p. 256; Navy 2002, p. D–9) and occurs mostly on clay to rocky soils (Vanderplank et al. 2018, p. 7). SCI lotus

is generally associated with two habitat types on the island: canyon woodland supported on approximately 696 ac (282 ha) and maritime desert scrub along the northeastern escarpment supported on approximately 6,228 ac (2,520 ha) (Navy 2002, pp. 3.57, 3.58).

SCI lotus is short-lived, with a reported lifespan of less than 5 years (USFWS 2008b, p. 113); however, individuals near Wilson Cove have been observed to live longer than 6 years (Emily Howe 2017, pers. comm. in Vanderplank et al. 2018, p. 6). Like other legumes, the roots of plants in the genus *Acmispon* to which SCI lotus belongs are able to fix atmospheric nitrogen, making it available to plants in the form of ammonia, enriching the soil and making members of the genus *Acmispon* important post-fire colonizers (Sørensen and Sessitsch 2007 in Vanderplank et al. 2018, p. 4).

SCI lotus flowers between February and August, peaking from March to May (Junak and Wilken 1998, p. 256; USFWS 2008b, p. 113), with halictid bees (a family of small solitary bees that typically nest in the ground), bumblebees, and small beetles observed foraging on the flowers (Junak and Wilken 1998, p. 257; Allan 1999, pp. 64, 85). A sister taxon (*Acmispon glaber* [syn. *Lotus scoparius*]) flowers in response to available moisture from fog and precipitation, primarily winter rainfall (Vanderplank and Ezcurra 2015, p. 416), which may also be true of SCI lotus. The taxon is self-compatible, meaning it is capable of self-fertilization, and can self-pollinate (Allan 1999, pp. 85–86), but plants may also rely on insects for more effective pollination (Arroyo 1981, pp. 728–729).

On average, a single SCI lotus individual can produce approximately 36 to 64 flowering shoots, 118 to 144 flowers per shoot, and 4 to 6 seeds per fruit (Junak and Wilken 1998, p. 257). This information suggests that, under ideal conditions, an individual can produce a high volume of seeds (16,000 or more). Like most legumes, SCI lotus seeds require scarification (weakening or opening the seed coat to promote germination) or gradual seed coat degradation to germinate (Wall 2011, pers. comm. in 77 FR 29078, p. 29095, May 16, 2012). SCI lotus is thought to have high long-term survival in the seed bank. Germination rates for seed stored for 6 years dropped only from 80 percent to 76 percent; one seed lot displayed 65 percent germination after more than 30 years in storage (Cheryl Birker 2017, pers. comm. in Vanderplank et al. 2019, p. 6).

The majority (67 percent) of SCI lotus's genetic variability is found among, rather than within, occurrences (Allan 1999, p. 61). However, more recent genetic work (McGlaughlin et al. 2018, p. 754) has shown moderate levels of genetic diversity in the species, with gene flow between neighbor populations. The genetic diversity of SCI lotus is equal to or higher than that of the mainland variety of the same species, *Acmispon dendroideus* var. *dendroideus,* and SCI lotus also contains unique and highly divergent genotypes (Wallace et al. 2017, pp. 747–748). SCI lotus has hybridized with *A. argophyllus* var. *argenteus* in disturbed areas in Wilson Cove (Liston et al. 1990, pp. 239–240; Allan 1999, p. 86). Based on intermediate characteristics, the hybrid plants appear to be first generation (F1 generation) plants from a cross between the two varieties. It is not known whether these plants can produce viable seeds by backcrossing between the hybrids or with the putative parent plants (Allan 1999, p. 86).

The fire tolerance of SCI lotus is not well understood. Based on SCI lotus's growth characteristics and occurrence increases in areas affected by fire, and the fire adaptations of related taxa, SCI lotus may be resilient to at least occasional fire. Because it is short-lived and likely relies on its seed bank for recruitment, fire may benefit this taxon by opening up areas of bare ground for seedling germination (USFWS 2007b, p. 7). However, frequent fires could exceed its tolerance of fire severity and frequency and exhaust the seed bank in repeatedly burned areas (USFWS 2007b, p. 11; USFWS 2022d, pp. 20–21).

*San Clemente Island Larkspur*

A thorough review of the taxonomy, life history, and ecology of the SCI larkspur is presented in the SSA report (USFWS 2022c). The SCI larkspur (*Delphinium variegatum* ssp. *kinkiense*) is an herbaceous perennial in the buttercup family (Ranunculaceae). It grows 6 to 33 in (14 to 85 cm) in height but generally is less than 20 in (50 cm) tall (Koontz and Warnock 2012, no pagination). The flowers are light blue to white in color and are bilaterally symmetrical with five petal-like sepals and four smaller petals. The uppermost sepal is a straight or downcurved spur that is characteristic for the genus.

SCI larkspur is one of two subspecies of *Delphinium variegatum* that occur exclusively on SCI, the other being Thorne's larkspur (*Delphinium variegatum* ssp. *thornei*). The island subspecies are currently distinguished primarily by flower color, with Thorne's larkspur generally having bright blue (*i.e.,* darker), slightly larger flowers than the SCI larkspur, which generally has white flowers, consistent with distinctions noted in earlier works (Dodd and Helenurm 2000, p. 125; Koontz and Warnock 2012, no pagination). SCI larkspur occurs mostly in the northern portion of the island, and Thorne's larkspur occurs in the southern portion of the island. However, in the middle of the island (and on the far southern end), the two flower colors coexist in many locations, with varying proportions of each color, and flower colors ranging from pure white to dark purple. While ambiguity of the subspecies classifications, mostly within the central areas of the island, has caused some confusion regarding true range and distribution, the currently accepted taxonomic treatment recognizes the two subspecies and is followed in our assessment.

The historical range and distribution of SCI larkspur on SCI is unknown because botanical studies were not completed before the plant's decline. The final listing rule (42 FR 40682; August 11, 1977) did not provide specific information regarding the SCI larkspur's distribution and abundance. The 1984 recovery plan noted that the subspecies occurred in six or seven locations (USFWS 1984, pp. 17, 35). The true range and distribution of SCI larkspur on SCI is somewhat unknown due to the ambiguity of the subspecies classifications, particularly in the central areas of the island where SCI larkspur and Thorne's larkspur co-occur, as do plants exhibiting characteristics intermediate between the two subspecies. While various delineations have been used to classify mixed occurrences (USFWS 2022c, p. 22), SCI larkspur is generally found mid-island on gentle slopes on the eastern side of the island, although the species has also been detected at higher elevations on the west side of the island (USFWS 2022c, p. 22). Since grazing pressure was removed on SCI, both subspecies of *Delphinium variegatum* have been noted to have expanded dramatically (O'Brien 2019, pers. comm.). The species' ability to go dormant also contributes to difficulties in determining population counts. The current distribution and abundance estimate of SCI larkspur is 18,956 individuals within 22 watersheds (see figure 5, below). Occupancy at two additional watersheds has been reported, but population counts are not available at these locations (USFWS 2022c, pp, v., 36).

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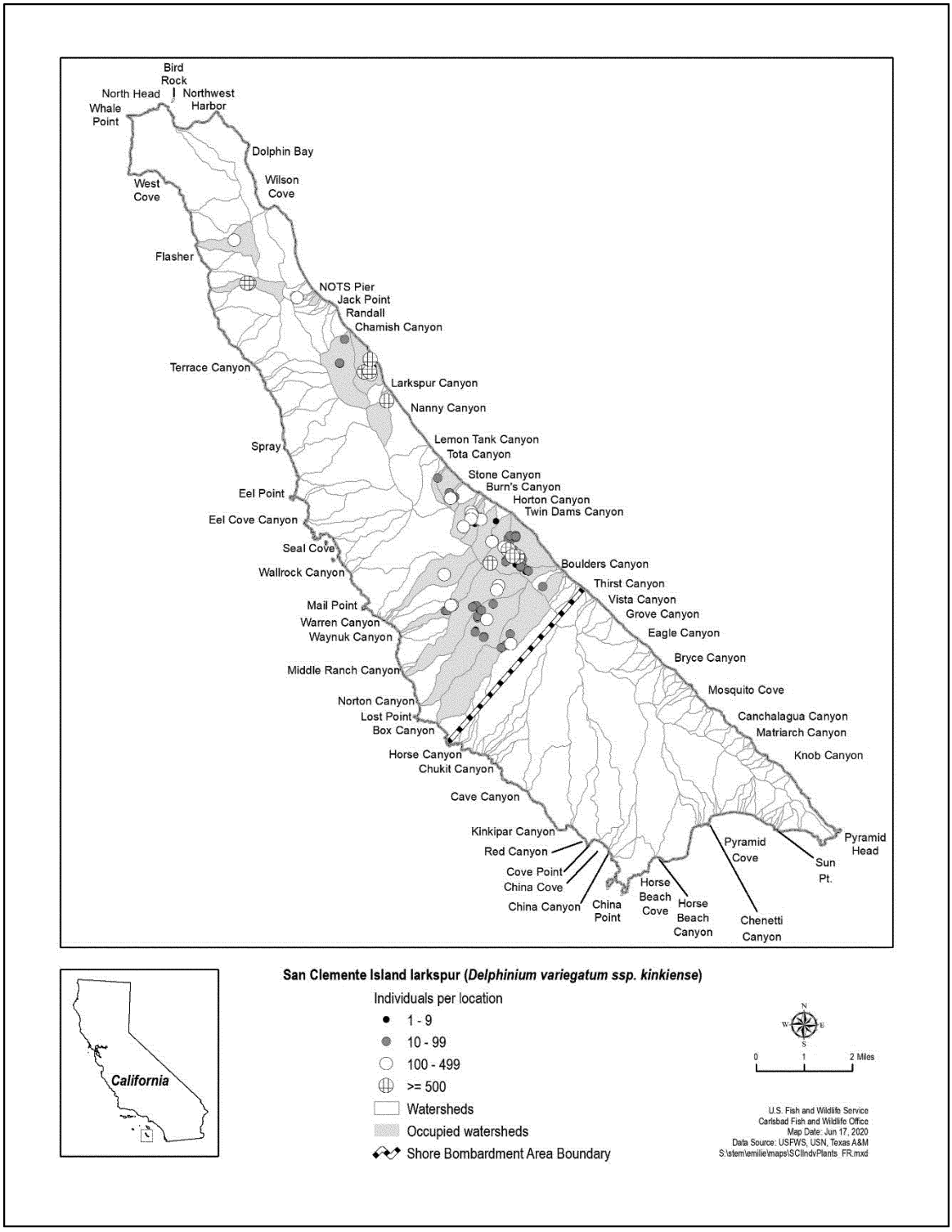


Figure 5—Map showing distribution of San Clemente Island larkspur on San Clemente Island, CA.

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SCI larkspur is found in a broad range of habitats within the same general vegetation types and is widespread across the island. SCI larkspur is generally found within mid- to high-elevation grasslands on the east side of the northern and central portions of the island where it occurs in clay, loam, and rocky soils with soil depths ranging from shallow to deep; however, it is more often associated with non-clay soils (Vanderplank et al., 2022.). Reported habitats have included coastal grasslands (Koontz and Warnock 2012, no pagination), as well as grassy slopes and benches, open grassy terraces, and chaparral and oak woods (Warnock 1993 in USFWS 2008a, p. 12). Currently, SCI larkspur occurs primarily on the east side of the island on gentle slopes with northern, northwestern, and

eastern exposures. The higher elevation plateau supports grasslands dominated by the native perennial bunch-grasses interspersed with annual forbs while the mid- and lower-elevation grasslands tend to be less floristically diverse and dominated by introduced annual grasses. They are primarily found within vegetation communities dominated by *Artemisia californica,* nonnative grasslands, and *Baccharis pilularis* (Vanderplank et al., 2022.).

Flower production in *Delphinium* can be highly variable and may be dependent upon quite localized weather conditions (Lewis and Epling 1959, p. 512) and soil moisture (Inouye et al. 2002, pp. 545, 549). Plants may not flower until reaching 2 to 3 years of age (*e.g.,* Waser and Price 1985, p. 1727 in reference to *D. nelsonii*).

SCI larkspur generally flowers from March to April (California Native Plant Society 2001, in USFWS 2008a, p. 3), but has been documented flowering from January to April (Koontz and Warnock 2012, no pagination). Blue and white flowered *Delphinium* species are largely pollinated by bumblebees (Waser and Price 1983, p. 343; Waddington 1981, p. 154). Several different species of pollinators have been observed visiting SCI larkspur (USFWS 2022c, p. 28; Junak and Wilken 1998, p. 120; Munson 2022, pers. comm.; SERG 2015b, p. 13). Given the spur-length of San Clemente Island larkspur, bumblebees or hummingbirds may be the primary pollinators (Jabbour et al. 2009, p. 814). Successful outcrossing within island populations indicates that pollination is effective; therefore, populations of pollinators are likely to be ample.

Like most other California larkspurs, SCI larkspur can survive below ground when conditions are unfavorable and may remain dormant and not appear above-ground for one or more years. The species begins to go dormant shortly after flowering, remaining dormant until early in the rainy season. Although we have no information on the lifespan of SCI larkspur, based on information regarding other species of larkspurs, it is likely that the subspecies is relatively long-lived (USFWS 2022c, p. 28). Because of the species' ability to go dormant, and additionally because flower production in *Delphinium* can be highly variable and may be dependent upon quite localized weather conditions, exact numbers of individuals are difficult to locate and count.

In comparison with other endemic plant species, *Delphinium variegatum* appears to be typical in its pattern of genetic diversity relative to its geographic range at both the population and taxon levels (Dodd and Helenurm 2002, p. 619). However, in comparison with other *Delphinium,* the genetic variation observed for the insular taxa of *D. variegatum* appears to be low. The data suggest that there is a higher level of gene flow among adjacent populations. If estimates of historical gene flow are indicative of current patterns, then gene flow among the 24 island populations studied appears to be high enough to prevent genetic differentiation among them. This finding is consistent with the general low level of genetic differentiation found among populations of other species in the genus *Delphinium* (Dodd and Helenurm 2002, pp. 619–620).

Little is known regarding the fire tolerance of SCI larkspur. However, its dormancy period (roughly May or June through November) and the fire season generally coincide (O'Connor 2022, pers. comm.; Navy 2009, p. 4.22). The possible benefits of fire to SCI larkspur include reduction in competitive shading and/or nutrient uptake, which would likely increase flowering and possibly visibility to pollinators.

**Recovery**

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species under the Act. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all guidance provided in a recovery plan.

In 1984, we published the Recovery Plan for the Endangered and Threatened Species of the California Channel Islands (recovery plan); it addresses the five species in this final rule, plus some additional species (USFWS 1984, entire). The recovery plan preceded the 1988 amendments to the Act outlining required elements of recovery plans. As such, the recovery plan does not include recovery criteria, but followed guidance in effect at the time it was finalized. Rather than including specific criteria for determining when threats have been removed or sufficiently minimized, the recovery plan identifies six objectives to achieve recovery of the Channel Island species. Given the threats in common to the species addressed, the recovery plan is broad in scope and focuses on restoration of habitats and ecosystem function. The six objectives identified in the recovery plan are:

- *Objective 1:* Identify present adverse impacts to biological resources and strive to eliminate them.
- *Objective 2:* Protect known resources from further degradation by: (a) Removing feral herbivores, carnivores, and selected exotic plant species; (b) controlling erosion in sensitive locations; and (c) directing military operations and adverse recreational uses away from biologically sensitive areas.
- *Objective 3:* Restore habitats by revegetation of disturbed areas using native species.
- *Objective 4:* Identify areas of San Clemente Island where habitat restoration and population increase of certain addressed taxa may be achieved through a careful survey of the island

and research on habitat requirements of each taxon.

- *Objective 5:* Delist or downlist those taxa that achieve vigorous, self-sustaining population levels as the result of habitat stabilization, habitat restoration, and prevention or minimization of adverse human-related impacts.
- *Objective 6:* Monitor effectiveness of recovery effort by undertaking baseline quantitative studies and subsequent follow up work (USFWS 1984, pp. 106–107).

The Navy has taken a variety of recovery actions to achieve the recovery plan's objectives. These include:

- Removing all feral herbivores, which was achieved in 1992.
- Monitoring and control of the expansion of highly invasive, nonnative plant species on an ongoing basis since the 1990s (O'Connor 2022, pers. comm.).
- Implementing a nonnative wildlife program (nonnative predator management) initiated by the Navy in 1992 (USFWS 2008b, p. 172).
- Conducting and funding surveys, research, and monitoring to better understand the ecology and habitat requirements of sensitive species and monitoring their status and the effectiveness of recovery efforts.
- Conducting long-term vegetation monitoring studies.
- Conducting propagation and outplanting (transplant individuals from the greenhouse to vegetative communities) of non-listed native species through a contract with the San Diego State University Soil Ecology and Restoration Group (SERG) (Navy 2013a, p. 3–5). Although the restoration efforts were not specifically designed for the benefit of the species addressed in this final rule, restoration of the island's vegetation communities has helped to improve habitat suitability for the subject species by reducing the spread of invasive, nonnative plants and restoring ecological processes.
- Conducting annual reviews of fire management and fire occurrences, allowing for adaptive management to minimize the frequency and spread of fires. For example, in 2017, after a large fire that burned part of the eastern escarpment had seemingly gone out, the fire restarted the next day and response was therefore delayed. This occurrence prompted a change in how the Navy monitors fires that are thought to be extinguished (O'Connor 2022, pers. comm.).
- Addressing assault vehicle-related erosion through development of an erosion control plan for the AVMAs (Navy 2013b, entire). The Navy also incorporates erosion control measures into all site feasibility studies to minimize impacts from erosion and avoid impacts to listed species.

*San Clemente Island Integrated Natural Resources Management Plan*

Contributions to meeting the recovery objectives include adoption and implementation of the SCI Integrated Natural Resources Management Plan (INRMP). The Navy adopted the SCI INRMP in 2002 (Navy 2002, entire) and updated it again in 2013 (Navy 2013a, entire). An INRMP is intended to guide installation commanders in managing their natural resources in a manner that is consistent with the sustainability of those resources, while ensuring continued support of the military mission (Navy 2002, p. 1–1). The INRMP identifies goals and objectives for specified management units and their natural resources, including measures to protect, monitor, restore, and manage special status species and their habitats. The Navy identifies and addresses threats to special status species during the INRMP planning process. If possible, threats are ameliorated, eliminated, or mitigated through this procedure.

The SCI INRMP outlines management actions for invasive species control island-wide, including near listed species; biosecurity protocols; restoration of sites that support sensitive plants; habitat enhancement for sensitive and listed species; fuel break installation to minimize fire spread; and fire suppression to protect endangered, threatened, and other priority species. The Navy also developed and implements specific plans for some management issues, including the SCI Wildland Fire Management Plan; Erosion Control Plan; and the Naval Auxiliary Landing Field San Clemente Island Biosecurity Plan. For additional details on the Navy's implementation of recovery efforts, see ''Conservation Actions and Regulatory Mechanisms,'' below.

Interim progress on achieving the recovery objectives resulted in improvements in the status of SCI paintbrush and SCI lotus such that our 2007 5-year reviews recommended reclassification (USFWS 2007a, p. 14; USFWS 2007b, p. 17), and both species were subsequently reclassified from endangered species to threatened species (78 FR 45406, July 26, 2013). We also recommended in our 2007 5-year review for SCI bush-mallow and 2008 5-year review for SCI larkspur that they be reclassified as threatened (USFWS 2007c, p. 22; USFWS 2008a, p. 26).

While the recovery plan did not include specific metrics, the plan's objectives have largely been achieved for these five species through removal of nonnative herbivores and subsequent recovery of native plant communities, and through restoration and management actions implemented by the Navy to improve habitat and control threats related to erosion, invasive species, fire, and land use. As a result of these actions, habitat has been sufficiently restored and managed on the island and supports self-sustaining populations for each of these five taxa.

**Regulatory and Analytical Framework**

*Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019).

However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical habitat decisions. Subsequently, on September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (In re: Cattlemen's Ass'n, No. 22–70194). The effect of the stay is that the 2019 regulations are the governing law as of September 21, 2022.

Due to the continued uncertainty resulting from the ongoing litigation, we also undertook an analysis of whether this final rule would be different if we were to apply the pre-2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on *https://www.regulations.gov,* concluded that we would have reached the same proposal if we had applied the

pre-2019 regulations because both before and after the 2019 regulations, the standard for whether a species warrants delisting has been, and will continue to be, whether the species meets the definition of an endangered species or a threatened species. Further, we concluded that our determination of the foreseeable future would be the same under the 2019 regulations as under the pre-2019 regulations.

The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in reclassifying a species from an endangered species to a threatened species or removing a species from the Lists (50 CFR 424.11(c) through (e)).

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors. The SSAs estimated the future condition of each species at 20–30 years, and we use that timeframe as the foreseeable future in this rule.

*Analytical Framework*

The SSA reports document the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including assessments of the potential threats to the species. The SSA reports do not represent our decisions on whether any of the species should be delisted or reclassified under the Act. They do, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA reports; the full SSA reports can be found at Docket No. FWS–R8–ES–2020–0074 on *https://www.regulations.gov.*

To assess species viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, severe wildfire); and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes, successional changes to habitat). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decisions.

**Summary of Biological Status and Threats**

Below, we review the biological condition of the species and their resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Each of the five SCI species occurs as a single population with no natural division in their ranges. However, for assessing species resilience and for monitoring and tracking the plant species in the future, we divided the species' ranges into watershed units to quantify threats across the range. Watersheds were suggested for use in delineation for monitoring purposes by the Navy (Vanderplank et al. 2019, pp. 6–7), as every point on the island can be easily assigned to a watershed, and watershed boundaries on SCI are not expected to change significantly during the 20- to 30-year timeframe of this analysis. These units are not meant to represent ''populations'' in a biological sense; rather, these units were designed to subdivide the species' ranges in a way that facilitates assessing and reporting the variation in current and future resilience across the range. In the SSAs for the plant species, we assessed the species' ability to withstand stochastic events in each watershed, and how these occupied watersheds contribute to the viability of the entire island population (the species). Note that this way of delineating analysis units within which to measure resiliency does not follow the methods used in the July 26, 2013, rule reclassifying SCI paintbrush and SCI lotus (78 FR 45406), and it is therefore not directly comparable. However, the watersheds that are represented correspond to the extant occurrences described in the July 26, 2013, reclassification rule (USFWS 2022d, pp. 82–85; USFWS 2022e, pp. 89–92).

To assess species resilience for SC Bell's sparrow, we followed the approach used in annual breeding season surveys. Annual breeding season surveys divide the island into eight vegetation strata, estimate the SC Bell's sparrow density in each strata, and extrapolate the density across the strata to obtain a population estimate for the strata. We assessed the resiliency of the subspecies within each of these strata in terms of the estimated population size, and combined the strata results to assess the resiliency of the subspecies. The vegetation strata do not represent ''populations'' in a biological sense; as with the plant species, these units subdivide the species' range in a way that facilitates assessing and reporting the variation in current and future resilience across the range.

*Species Needs*

Our SSA framework generally includes identifying the species' ecological requirements for survival and reproduction at the individual, population, and species levels. However, population-level and species-level needs, such as number of individuals or reproductive success necessary to maintain an occurrence, level of gene flow or dispersal, etc., are not well understood for any of the five species. Where information is lacking or incomplete, we make certain scientific assumptions based on principles of conservation biology to conduct our analyses. In each of the plant SSAs, we make the assumption that, for the plant species, higher numbers of individuals within a watershed correlate with greater resilience and, conversely, watersheds with fewer individuals or with only one occupied location within the watershed have lower resiliency. Similarly, for SC Bell's sparrow, our models in the SSA assume that density correlates with greater resilience, and that vegetative strata with greater densities have greater resilience.

*Risk Factors for the San Clemente Island Species*

We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be affecting the five SCI species now and in the foreseeable future. In this final rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Those risks that are not known or unlikely to have effects on the status of the SCI species, such as disease or seed predation, are not discussed here, but are evaluated in the SSA reports. Many of the threats and risk factors are the same or similar for each of the species. Where the effects are expected to be similar, we present one discussion that applies to all species. Where the effects may be unique or different to one species, we address that species specifically. Many of the risk factors affect both habitat (quantity and quality) and individuals of the species (disturbance, injury, or mortality). The primary risk factors (*i.e.,* threats) affecting all the SCI species are: (1) Past, current, and future land use, including military training activities (Factors A and E from the Act); (2) erosion (Factor A); (3) invasive species (Factors A and E); (4) fire and fire management (Factors A and E); and (5) climate change (Factors A and E). Additional risk factors for some of the species include predation (Factor C), drought (Factors A and E), small population size (Factor E), and reduced genetic diversity (Factor E). Finally, we also reviewed the conservation efforts being undertaken for the species.

*Past Land Use*

The current habitat conditions for listed species on SCI are partly the result of historical land use practices. SCI was used legally and illegally for sheep ranching, cattle ranching, goat grazing, and pig farming (77 FR 29078, p. 29093, May 16, 2012; Navy 2013a, p. 2–3). Goats and sheep were introduced early by the Europeans, and cattle, pigs, and mule deer were introduced in the 1950s and 1960s (Navy 2013a, p. 3–185). These nonnative herbivores greatly changed the vegetation of SCI and were the main cause of the SCI species' decline (42 FR 40682, p. 40683, August 11, 1977). Persistent grazing and browsing defoliated large areas of the island, and the animals' trampling caused trail proliferation, which exacerbated erosion, altering plant communities on SCI and leading to severe habitat degradation and loss of suitable habitat that likely curtailed the range of endemic plants and animals on the island. Grazing and ranching on the island also facilitated the introduction and spread of nonnative plants (Navy 2002, p. 3–31).

All nonnative ungulates were removed by 1992 (Keegan et al. 1994, p. 58; 77 FR 29078, p. 29093, May 16, 2012). Since then, the vegetation on SCI has rebounded, and habitat conditions have improved, leading to changes in the cover of native and nonnative plants on the island, further evidenced by the increases in endangered and threatened taxa since the feral animals were removed (Uyeda et al. 2019, pp. 6, 22, 30). While nonnative herbivores have been successfully removed and are no longer directly affecting native plant communities, continuing impacts include areas vulnerable to erosion that have not fully recovered, the presence of invasive species, and the interaction of nonnative grasses with fire. The past and continuing effects of erosion, invasive species, and fire are discussed further below.

*Overview of Current Land Use*

SCI is owned by the Navy and is the primary maritime training area for the Pacific Fleet and Sea Air and Land Teams (77 FR 29078, May 16, 2012). The island also supports training by the Marine Corps, the Air Force, the Army, and other military organizations. As the westernmost training range in the eastern Pacific Basin, where training operations are performed prior to troop

deployments, portions of the island receive intensive use by the military (Navy 2008a, p. 2.2).

Infrastructure, including runways, buildings, fuel distribution network, training facilities, berthing areas, and associated development, is concentrated at the northern half of the island. The remainder of the island supports scattered operations buildings, training facilities, an electrical distribution system, and Ridge Road running along the central plateau of the island. In addition to existing infrastructure, military exercises and training activities occur within designated training areas on the island and have the potential to affect the SCI species (see table 1, below). Altogether, 34.8 percent of the island's area is currently in one of these training areas, although training does not occur uniformly within each area. Military training activities can involve the movement of assault vehicles and troops over the landscape and can include live munitions fire, incendiary devices, demolitions, and bombardment.

The Shore Bombardment Area (SHOBA) occupies roughly the southern third of the island and encompasses approximately 13,824 ac (5,594 ha) (Navy 2008a, p. 2–7, Navy 2009, p. 2–4). Areas of intensive use within SHOBA include two Impact Areas and three Training Areas and Ranges (TARs). Impact Areas support naval gun firing, artillery firing, and air-to-ground bombing (Navy 2008a, p. 2–7; Navy 2013a, p. 2–8). Much of the remainder of SHOBA serves as a buffer around Impact Areas; thus, 59 percent of SHOBA is not within intensive training areas subject to direct training activities. Some areas, particularly the escarpment along the eastern coast, have limited training value because precipitous terrain hinders ground access.

Due to military training activities, land use has been considered a threat to listed species on SCI. Training and other land use activities have multiple potential impacts, including trampling or crushing individuals or groups of plants; disturbance of nesting birds or injury or mortality of nestlings; and habitat impacts including disturbances to soil and vegetation, spread of nonnative plant species, creation of road ruts and trails, compaction of soils, and fires (USFWS 2008b, pp. 96–99). Erosion, nonnative species, and fire are discussed separately from military training in this final rule.

TABLE 1—SUMMARY OF CURRENT MILITARY TRAINING AREAS AND THEIR POTENTIAL THREATS TO SPECIES ON SAN CLEMENTE ISLAND, CA

| Training area | Size (acres) | Percent of island* | Use | Threat/stressor |
|---|---|---|---|---|
| Assault Vehicle Maneuver Areas (3). | 1,060.5 | 2.9 | Vehicular maneuvering ..... | Soil erosion, trampling, devegetation (habitat removal); disturbance, injury, or mortality of individuals. |
| Infantry Operations Area ..... | 8,827.6 | 24.5 | Dispersed foot traffic ..... | Trampling, soil erosion; disturbance, injury, or mortality of individuals. |
| Training Areas and Ranges (TARs) (20). | 1,968.2 | 5.5 | Varies by TAR: demolition, small arms, combat, etc. | Varies by TAR, but limited to trampling, fires, localized ground disturbance; disturbance, injury, or mortality of individuals. |
| Impact Areas (2) ..... | 3,399.7 | 9.4 | Bombing, live fire ..... | Devegetation (habitat removal), fires; disturbance, injury, or mortality of individuals. |

*Because several training areas overlap, percentages total more than the 34.8 percent of the island's area located in training areas.

*Overview of Future Land Use*

The Navy is drafting an environmental assessment to evaluate future training areas, exercises, and frequency on SCI. Training frequency and intensity in existing training areas will increase in the future, and new training areas, including landing zones (LZs), AVMAs, and a new TAR may be established. Up to 19 new helicopter LZs may be designated, and we anticipate impacts associated with training could occur within about 500 feet of each LZ. Future training may include up to 13 new AVMAs, 6 of which overlap with existing training areas. We anticipate impacts associated with this training could occur within about 500 feet of each AVMA. Future training also includes one new TAR (TAR 23), which will be located on the northwestern shore of SCI, within significant high-quality boxthorn habitat that is proposed as an SCI Bell's Sparrow Management Area. For our analysis in this final rule, we assessed these additional training areas, the anticipated impacts, and the conservation measures the Navy will implement to ensure the viability of the five SCI species.

TABLE 2—SUMMARY OF PROPOSED MILITARY TRAINING AREAS AND THEIR POTENTIAL IMPACTS TO SPECIES ON SAN CLEMENTE ISLAND, CA

| Training area | Size (acres) | Percent of island | Use | Threat/stressor |
|---|---|---|---|---|
| Landing Zones ..... | 432 | 1.2 | Landing and staging of aircraft. | Soil erosion, trampling, devegetation (habitat removal), disturbance, injury, or mortality of individuals. |
| Assault Vehicle Maneuver Areas. | 879 | 2.4 | Vehicular maneuvering ..... | Soil erosion, trampling, devegetation (habitat removal); disturbance, injury, or mortality of individuals. |
| Training Area and Range #23. | 587 | 1.6 | Sniper use ..... | Trampling, localized ground disturbance; disturbance, injury, or mortality of individuals. |

*Land Use for Military Training*

*San Clemente Bell's sparrow*—SC Bell's sparrows may be adversely affected in habitat within and surrounding current and future training areas. Potential adverse effects include modification and degradation of habitat, as well as the disturbance, injury, or death of individual SC Bell's sparrows and loss of active SC Bell's sparrow nests (USFWS 2008b, p. 174). However, because the timing, intensity, and frequency of training activities vary widely and SC Bell's sparrow density also varies, impacts associated with training in various training areas is very difficult to predict or measure. In addition, SC Bell's sparrow may tolerate an undetermined level of adjacent training-related disturbance. For example, monitoring of SC Bell's sparrow densities in habitat adjacent to two TARs within high-density SC Bell's sparrow habitat did not detect major changes to SC Bell's sparrow densities in the time period 2015–2018 (Meiman et al. 2019, pp. 9, 20–23, 38–39).

*Plants*—Military training activities within training areas (primarily the Infantry Operations Area, TARs, and AVMAs) can entail the movement of vehicles and troops over the landscape and thus include the potential of trampling or crushing individuals or groups of plants, or removal of habitat. Naval gun firing, artillery firing, and air-to-ground bombing occurs within the Impact Areas, and can result in the destruction of habitat, injury or mortality of individual plants, and fires. Where the distributions of the plant taxa overlap with training areas, there is potential for impacts to individuals and to habitat. Tables 3 and 4, below, detail the number of locations, individuals, and percent of population of each of the plant taxa that could occur within current and future training areas. Percent of populations within training areas range from less than 1 percent to 13 percent. However, all land within each training area is not used for training, and frequency and intensity of training vary among areas and uses, such that only a subset of individuals within any training area is likely to be affected. Additionally, some effects are minor, such as trampled leaves or broken branches (*i.e.,* injury but not mortality), and frequency of training impacts may allow sufficient time for individuals and habitats to recover.

*Conservation Actions To Be Implemented by the Navy*

The Navy will incorporate conservation and minimization measures into plans for current and future training areas to reduce potential for impacts, including erosion control measures for recently proposed AVMAs (comparable to significant erosion control measures at existing AVMAs), fire management measures to address recently proposed training areas (in an updated SCI Wildland Fire Management Plan, and SC Bell's sparrow minimization measures identified in the SSA, regardless of listing status of the five species.

TABLE 3—NUMBERS OF LOCATIONS, WATERSHEDS, AND INDIVIDUALS OF PLANT TAXA THAT OCCUR WITHIN EXISTING MILITARY TRAINING AREAS ON SAN CLEMENTE ISLAND (SCI)

[USFWS 2022B, p. 45; USFWS 2022C, p. 52; USFWS 2022D, p. 36; USFWS 2022E, p. 37]

| Species | Locations | Watersheds | Individuals | Percent of population |
|---|---|---|---|---|
| SCI paintbrush | 74 | 19 | 2,089 | 4.34 |
| SCI lotus | 4 | 4 | 22 | 0.11 |
| SCI larkspur | 10 | 4 | 1,847 | 9.74 |
| SCI bush-mallow | 42 | 1 | 731 | 13 |

TABLE 4—NUMBERS OF LOCATIONS, WATERSHEDS, AND INDIVIDUALS OF PLANT TAXA THAT OCCUR WITHIN POTENTIAL MILITARY TRAINING AREAS ON SAN CLEMENTE ISLAND (SCI)

[USFWS 2022B, p. 45; USFWS 2022C, p. 52; USFWS 2022D, p. 36; USFWS 2022E, p. 37]

| Species | Locations | Watersheds | Individuals | Percent of population |
|---|---|---|---|---|
| SCI paintbrush | 7 | 6 | 50 | 0.12 |
| SCI lotus | 11 | 1 | 651 | 3.14 |
| SCI larkspur | 0 | 0 | 0 | 0 |
| SCI bush-mallow | 0 | 0 | 0 | 0 |

*Summary*—While ongoing military training activities have the potential to impact all five SCI species, the majority of locations and habitats currently occur outside intensive training areas. Within training areas that overlap with the species' distributions, many effects are expected to be infrequent, minor, or temporary. Additionally, the Navy is committed to protecting and managing natural resources on the island through revision and continued implementation of the SCI INRMP (Navy 2013a), which outlines measures for managing land and water resources on the island, including listed and sensitive species, and which will be revised as needed to incorporate additional measures to address impacts from future training. Other conservation plans being enacted by the Navy will also be modified as needed to address future impacts. Training is expected to continue within the revised training footprint used for this analysis, but intensity of training could increase in the future. Changes to training have and will continue to be subject to environmental review under applicable laws and regulations, and impacts to federally listed and sensitive species will be evaluated (O'Connor 2022, pers. comm.). Projects and changes in training areas are subject to the Navy's site approval and review process, which includes identifying avoidance and minimization measures for plant communities and sensitive species, including measures that are recommended in the SCI INRMP (Navy 2013a, pp. 4–23, 4–28). Coupled with ongoing management of related threats (including wildland fire, soil erosion, invasive species) under the SCI INRMP and implementation of post-delisting monitoring, it is highly unlikely that

future changes in military training on SCI will impede or reverse advances in the recovery of these five species.

*Invasive and Nonnative Species*

Along with the introduction of feral, nonnative herbivores, many other nonnative species have been introduced to the island. While nonnative, feral grazers have been completely removed from SCI, other nonnative species have become established and have the potential to negatively affect species and their habitats. These include feral cats (*Felis catus*), black rats (*Rattus rattus*), and many species of nonnative plants, especially nonnative annual grasses. Feral cats and black rats can prey on eggs, chicks, and adult SC Bell's sparrows. Nonnative plant species may alter ecological processes and habitats, while also directly competing with native plant species.

*Predation by black rats and feral cats*—Since listing, predation on SC Bell's sparrow by introduced black rats and feral cats and by native predators has been documented (USFWS 2022a, p. 57). While total population sizes of feral cats and black rats on the island are unknown and have not been estimated, the Navy conducts management activities for both on the island. Nonnative wildlife management implemented through the INRMP focuses on control of feral cats throughout the island and rodent control near San Clemente loggerhead shrike (*Lanius ludovicianus mearnsi*) nest sites (Meiman et al. 2015, p. 2). This program, while unlikely to completely eradicate feral cats and black rats, affords some protection to the SC Bell's sparrow, primarily through cat removal. Black rats remain commonly recorded nest predators (Meiman et al. 2018, p. 26). Despite the persistence of and current inability to eradicate black rats, the SC Bell's sparrow population expanded over the past two decades, increasing in abundance and distribution.

*Nonnative plants*—Contemporaneous with and likely aided by feral grazing animals, many invasive, nonnative plant species have become naturalized on SCI and are now widespread (USFWS 2022b, pp. 47–49; USFWS 2022c, pp. 57–58; USFWS 2022d, pp. 40–41; USFWS 2022e, p. 43). Nonnative plants can alter habitat structure and ecological processes such as fire regimes, nutrient cycling, hydrology, and energy budgets, and they can directly compete with native plants for water, space, light, and nutrients (77 FR 29078, p. 29117, May 16, 2012). In addition to altering habitat, potential impacts of nonnative plants on the four SCI plant species include precluding germination (*i.e.,* competitive exclusion) and reducing or preventing pollination (*e.g.,* by growing densely around plants and thereby making them less obvious or less accessible to pollinators). The invasion of nonnative annual grasses on the island may have caused the greatest structural changes to habitat, especially on the coastal terraces and in swales (USFWS 2007a, pp. 4–5). Annual grasses vary in abundance with rainfall, potentially changing the vegetation types from shrublands to grasslands and increasing the fuel load in wet years and interacting with fire (Battlori et al. 2013, p. 1119). The effects of fire are discussed separately below.

While nonnative plants, especially nonnative annual grasses, have the potential to adversely affect the listed plant species, nonnative grasses are present but not a dominant component of the plant communities at the majority of occurrences of the four SCI plant species. SCI paintbrush and SCI lotus are often associated with vegetation types where nonnative grasses are present but do not represent a dominant component of the plant community (Junak and Wilken 1998, p. 261; Tierra Data Inc. 2005, pp. 29–42; USFWS 2007b, pp. 6–7; Vanderplank et al. 2019, p. 12). Surveys conducted in 2011 and 2012 found just 4 occurrences (170 individuals) of SCI paintbrush in communities dominated by invasive grasses and no SCI lotus in communities dominated by nonnative grasses (Vanderplank et al. 2019, p. 12). Nonnative grasses do not occur densely within canyons, where SCI bush-mallow occurs, and it does not appear as if grasses are expanding, although they have been present on the island for many decades.

SCI larkspur occurs within grasslands that have experienced a proliferation of nonnative plant species, especially annual grasses. Surveys conducted between 2011 and 2017 found 13 of 74 locations of SCI larkspur in communities dominated by invasive grasses (Navy, unpublished data; Vanderplank et al., 2022).

While nonnative plant species, including nonnative annual grasses, are extensively distributed across SCI both because of post-grazing colonization of weedy species in highly disturbed habitat and accidental introduction of new weeds through human activities, there is no indication they are impeding recovery. Since the removal of feral grazers, all vegetation communities have been recovering, and naturalized grasslands (the most fire-prone of nonnative vegetation communities) currently constitute a small proportion of the island, approximately 10.6 percent of the island area (Navy 2013a, p. 3.59). In addition, the island now has more intact habitats, reduced erosion, and a stronger suite of native competitor species, making the conditions less favorable to invasion. The Navy makes significant efforts to control highly invasive, nonnative perennial grasses and nonnative forbs to preclude their expansion into habitat areas and areas in which weed control would be difficult due to terrain and access challenges, and the Navy has monitored and controlled the expansion of highly invasive, nonnative plant species on an ongoing basis since the 1990s (O'Connor 2022, pers. comm.). Many conservation measures are included in the INRMP to limit the introduction and spread of nonnative plants (Navy 2013a, pp. 3.289–3.290). The Biosecurity Plan (Navy 2016, entire) will continue to effectively control the arrival of potentially invasive propagules. The plan contains actions recommended to avoid introduction of new invasive species and works to prevent and respond to new introductions of nonnative species and bio-invasion vectors. Despite the existence of nonnative plants on SCI, the four SCI plant species have expanded in distribution and abundance since listing (42 FR 40682, August 11, 1977).

*Erosion*

Degradation of the vegetation due to the browsing of feral goats and rooting of feral pigs modified the island's habitat significantly and resulted in increased erosion and soil loss over much of the island, especially on steep slopes where denuded soils could be quickly washed away during storm events (Johnson 1980, p. 107; Tierra Data Inc. 2007, pp. 6–7; Navy 2013a, pp. 3.32–3.33). Since the feral animals were removed, much of the vegetation has recovered, and natural erosion on the island has decreased significantly (Navy 2013a, p. 3–33; Vanderplank et al. 2019, p. 15). Erosion problems currently are limited to localized areas, and because of topography and soil characteristics, the potential will always exist for localized erosion to occur at sites across the island. Periods of heavy rainfall can cause localized erosion, but these areas are difficult to predict.

In addition to erosion caused by past land uses, current and future military training activities and the existing road network could lead to erosion that could impact species and their habitats. Erosion is a primary concern associated with use of the Assault Vehicle Maneuver Corridor (AVMC). To address this issue, the Navy is implementing the

San Clemente Island Erosion Control Plan (Navy 2013b, entire), which includes best management practices to prevent, minimize, and restore impacts to sensitive resources within the AVMC. Implementation of this plan has resulted in prioritization of low-erosion areas within the AVMAs for assault vehicle use and establishment of routes within the AVMAs to reduce loss of vegetation cover and allow for better control of erosion (Vanderplank et al. 2019, p. 16).

The existing road network on SCI includes Ridge Road and approximately 188 linear miles of dirt and paved roadways. These roads can concentrate water flow, causing incised channels and erosion of slopes (Forman and Alexander 1998, pp. 216–217). Increased erosion near roads could potentially degrade habitat, especially along the steep canyons and ridges. On occasion after particularly heavy rainfall events, localized areas of high erosion stemming from roadways have been noted; however, regular road maintenance and repair of associated damage minimizes the potential for such problems to spread. The SCI INRMP includes a management strategy that addresses island-wide erosion. Implementation of the SCI INRMP as well as the Erosion Control Plan (Navy 2013b, entire), which include best management practices to prevent, minimize, and restore impacts to sensitive resources, will continue to prevent erosion from adversely affecting the SCI species and their habitats.

Potential for erosion to affect species depends on whether the species and their habitats occur on soils or topography prone to erosion, and on their proximity to activities that can cause or exacerbate erosion. The SSAs used a 30-m (100-ft) buffer around roads as an appropriate distance over which negative impacts to habitat could be perceptible and should be evaluated. Previously in our analysis, we considered individuals that occur within 152 m (500 ft) of a paved or unpaved road vulnerable to habitat degradation (Forman and Alexander 1998, p. 217; 77 FR 29078, p. 29102, May 16, 2012). However, based on expert opinion and observations on SCI since 2012, increased erosion associated with roads does not extend as far from the road network as previously thought (O'Connor 2022, pers. comm.). Based on these observations, the buffer size considered in our proposed delisting rule was reduced in the SSAs (Versions 1.0 and 1.1) to 30 m (100 ft) for our analysis in this final rule.

*SC Bell's sparrow*—While habitat for SC Bell's sparrow may be affected by erosion, erosion is generally localized (*i.e.,* not widespread and limited in size) and is unlikely to affect individuals of the sparrow.

*SCI paintbrush*—SCI paintbrush is found mostly on non-clay soils that are not prone to piping (formation of underground water channels), and no piping or soil erosion channels have been observed in SCI paintbrush locations (Vanderplank et al. 2019, p. 16). Only 2 percent of individuals detected in the 2011 and 2012 surveys were located in areas mapped as clay soils (Vanderplank et al. 2019, p. 16). Along the eastern escarpment, SCI paintbrush is found in steep canyons in proximity to Ridge Road, the primary road that traverses most of the island from northwest to southeast. Roadside occurrences of SCI paintbrush may experience runoff during storm events (Navy 2008a, pp. G.4, G.8). Of the SCI paintbrush current distribution, 144 individuals in 6 watersheds are located within 30 m (100 ft) of a road or the AVMC (USFWS 2022e, p. 41). Island-wide, this represents 7 percent of the total occupied watersheds and 0.2 percent of the total individuals.

*SCI lotus*—Less than 1 percent of the current population of SCI lotus occurs within training areas where there is an increased potential for erosion caused by military activities. The occurrence of SCI lotus in Wilson Cove is in proximity to Navy facilities where erosion is caused by construction of buildings and parking lots (USFWS 2008b, p. 117). No individuals have been documented to be affected by erosion in this area (SERG 2015a, p. 40). Within the current distribution, 434 individuals in 6 watersheds are located within 30 m (100 ft) of a road (USFWS 2022d, p. 39). Island-wide, these amounts represent 2 percent of the total locations and 2 percent of the total individuals. Locations that could be affected by road impacts (including trampling, erosion, and increased invasive species) exist within five watersheds. Only one of these has 100 percent of their individuals located near a road, and all of the rest have fewer than 20 percent of the individuals or locations in areas considered in this assessment to be at risk of road impacts (USFWS 2022d, p. 39).

*SCI larkspur*—Less than 10 percent of the current population of SCI larkspur lies within training areas, and none of these plants occur in AVMAs, which are the training areas where potential for erosion is of greatest concern. Of the distribution considered current, only 1 location comprising 70 individuals is located within 30 m (100 ft) of a road. Island-wide, these amounts represent 1 percent of the total locations and 0.3 percent of the total individuals. This location that could see road impacts is just one of five in the watershed, comprising 11 percent of the total individuals in the watershed (USFWS 2022c, p. 56).

*SCI bush-mallow*—Approximately 13 percent of the current population of SCI bush-mallow lies within training areas, but none of these plants occur in AVMAs, which are the training areas with the greatest potential for erosion. No current locations of SCI bush-mallow occur within 30 m (100 ft) of a road.

The Navy monitors and evaluates soil erosion on SCI to assess priorities for remediation (SERG 2006, entire; SERG 2015a, entire), and efforts are made through revegetation and outplanting to restore areas where erosion occurs (SERG 2016, p. 2). The INRMP requires that all projects with potential erosion impacts include soil conservation measures for best management practices, choosing sites that are capable of sustaining disturbance with minimum soil erosion, and stabilizing disturbed sites (Navy 2013a, pp. 3.33–3.37). In addition, the erosion control plan includes specific guidelines for the development and application of best management practices to minimize soil erosion within these training areas, minimize offsite impacts, and prevent soil erosion from adversely affecting federally listed or proposed species or their habitats and other sensitive resources (Navy 2013b, entire).

Despite existing levels of soil erosion on the island, the distributions of all five species have increased since listing (42 FR 40682, August 11, 1977). Current erosion issues are localized, and erosion is generally decreasing on the island as the vegetation continues to recover. Only a small percentage of individuals and localities of these species occur within training areas or within proximity to roads where activities can cause or exacerbate erosion. Although the erosional processes must be considered at an island-wide scale, impacts from erosion are not rangewide. Instead, impacts are localized (*i.e.,* not widespread and limited in extent) and managed, so potential for loss of individuals due to erosion is limited or unlikely.

*Fire and Fire Management*

*SC Bell's sparrow*—Fire can result in habitat loss and the direct mortality of adult SC Bell's sparrows and nestlings (Navy 2018, p. 20). While any fire severity can destroy nests and nestlings, infrequent low-severity fires are unlikely to result in type conversion that eliminates habitat, since shrubs

used as nesting and foraging habitat, if burned by a low-severity fire, may recover or resprout. Most fires on SCI have been classified as low severity, which may singe or stress shrubs but not kill or destroy them (USFWS 2022a, pp. 51–57). A burned area, unless experiencing a particularly severe fire, would likely still provide nesting substrate once the shrubs have recovered. Any fire can have a short-term negative impact on SC Bell's sparrows locally. Frequent, widespread or high-severity fires could have a longer term negative impact depending on where and how they burn. A fire-return interval of 3 years or less has been shown to negatively impact woody shrubs on SCI (Keeley and Brennan 2015, p. 3). For instance, a fire that burns a substantial portion of the boxthorn habitat or sagebrush habitat, areas with the highest densities of SC Bell's sparrow, could impact a substantial portion of the SC Bell's sparrow population. For example, the northern boxthorn strata support almost 35 percent of the population (USFWS 2022a, p. 38), and a high-severity fire in this area could have a significant impact on the Bell's sparrow population.

Based on current knowledge of habitat use, with the expansion of SC Bell's sparrows into a broader range of habitats, more of the subspecies' distribution is within areas we expect could be impacted by fire. However, the current fire patterns and severity indicate most fires typically start in the Impact Areas in SHOBA, away from the highest density areas for SC Bell's sparrow. Fires are generally of low severity and burn limited areas due to the application of firebreaks and fire suppression. To date, no fires have broken out and burned the high-density boxthorn habitat around TARs 10 and 17. (USFWS 2022a, p. 50). The Navy is expected to continue implementing its SCI Wildland Fire Management Plan (Navy 2009), and we expect that fires will continue to occur in similar areas and at similar frequency and intensity to that observed between 2010 and 2022 and will affect a limited number of individuals and locations of SC Bell's sparrow.

*Plants*—Fire is a natural component for regeneration and maintenance of many habitats; however, maritime desert scrub communities on SCI are not found to have been fire-dependent due to maritime-related humidity, limited natural ignition sources, and adaptations of specific indigenous plants. The history of fire on the island prior to 1979 is largely unknown, but fires were set intermittently during ranching to increase the cover of forbs and grasses (Navy 2009, p. 3–2; Navy 2013a, p. 3–47). After the island was purchased by the Navy in 1934, fire became a more common occurrence throughout much of the island. Since 1979, over 50 percent of the island has experienced at least one wildfire with smaller areas on the island having burned up to 10 times between 1979 and 2018 (Navy 2013a, p. 3–47; Navy, unpub. data).

The number and extent of fires (acres burned) varies annually, as does fire severity. Currently, most fires on the island are a result of military training and activities. Most large fires are ignited in the Impact Areas, with most of the acreage burned concentrated in SHOBA (Navy 2013a, p. 3–45). Fire severity data (2007 to present) indicate that most fires are classified as low severity, with vegetation considered lightly burned or scorched. However, 15.6 percent of the acreage burned has been of a severity class that has detrimental effects on shrubs, considered moderately severe to completely burned. At low-severity levels, fires have little effect on shrubs, which resprout and recover easily (Navy 2009, p. 4–52). Typically, due to the patchy nature of fires, not all areas within a fire footprint are burned uniformly; that is, not all plants in a burn polygon are necessarily burned or burned at the same severity (SERG 2012, p. 39). Although fire ignition points are concentrated in the military training areas, fires that escape these areas could potentially spread to other areas of the island. However, due to vegetation and topography, fires have generally been confined to the same areas (Munson 2022, pers. comm.).

Future increased fire frequency from intensified military use and expansion of training into new areas could lead to localized changes in vegetation. The Navy significantly expanded the number of locations where live fire and demolition training can take place in 2008 (USFWS 2008b, pp. 21–37). However, while the number of acres that burn annually varies greatly, the frequency and extent of fire has decreased since the Navy began actively managing fire and implementing the Wildland Fire Management Plan (Navy 2009, entire; USFWS 2022a, p. 56; USFWS 2022b, pp. 53–54; USFWS 2022c, pp. 64–65; USFWS 2022d, pp. 45–47; USFWS 2022e, p. 48). The biggest fire years between the time of listing and now, in 1985 and 1994, burned more than twice the acreage than the two biggest fire years in the last 15 years (2012 and 2017), which occurred since implementation of the Wildland Fire Management Plan (Navy 2009, entire; USFWS 2022a, p. 56; USFWS 2022b, pp. 53–54; USFWS 2022c, pp. 64–65; USFWS 2022d, pp. 45–46; USFWS 2022e, p. 48).

Severe fires can kill shrubs and woody vegetation and alter the vegetation community, while frequent fires may not allow individuals and habitat to recover between fire events and have the potential to exceed a plant's capacity to sustain populations by depleting seed banks and reducing reproductive output (Zedler et al. 1983, pp. 811–815). However, effects to individual species depend on the species' fire tolerance and on the overlap of its distribution with areas where fires are likely to occur.

Fires can impact plants on SCI, but have been generally localized, infrequent, and of low severity, and have burned mostly in regions where these taxa are not documented (USFWS 2022b, pp. 52, 56; USFWS 2022c, pp. 61, 66; USFWS 2022d, pp. 44, 50; USFWS 2022e, pp. 46, 52). In addition, rhizomes and seed banks can help these plants survive and persist post-fire. Though severe fires may kill SCI lotus, some plants are likely to survive and resprout after low-intensity fires (USFWS 2022d, p. 20). Severe fires may also kill individual SCI paintbrush plants, however plants are likely to survive and may benefit from low-intensity fires (USFWS 2022e, pp. 23–24). SCI larkspur does not appear to be significantly affected by fire, likely due to its dormant period coinciding with periods when fires are more likely (USFWS 2022c, pp. 30–31). SCI bush-mallow may be tolerant of fire. Its continued presence in areas that have burned and documentation of resprouting and recovering after fires indicate it is at least somewhat tolerant of fires (USFWS 2022b, p. 25). All four plant species appear to have increased in distribution and population size under the current fire pattern and fire management.

While fires have the potential to burn most places on the island, land use, vegetation, and historical patterns indicate that fires are most likely to burn in the same areas they have historically. Table 5 indicates the number of locations of each of the plant species that have burned (USFWS 2022b, pp. 51–53; USFWS 2022c, pp. 61–65; USFWS 2022d, pp. 45–49; USFWS 2022e, pp. 47–51). The majority of habitat that support these four plant taxa has not burned, and less than 10 percent of the occupied locations have burned more than once in the past 20 years.

TABLE 5—NUMBERS OF LOCATIONS AND INDIVIDUALS OF PLANT SPECIES AFFECTED BY FIRE WITHIN THE LAST 20 YEARS ON SAN CLEMENTE ISLAND (SCI)

| Species | Total number of locations | Number of locations burned | Number of locations burned two or more times in 20 years | Percent of locations burned two or more times in 20 years | Number of individuals | Watersheds |
|---|---|---|---|---|---|---|
| SCI lotus | 249 | 26 | 12 | 4.8 | 855 | 10 |
| SCI paintbrush | 601 | 133 | 47 | 7.8 | 8,596 | 29 |
| SCI larkspur | 74 | 5 | 0 | 0 | 458 | 2 |
| SCI bush-mallow | 222 | 68 | 11 | 5.0 | 2,076 | 4 |

Given the historical patterns, most fires have burned outside locations where the four SCI plants species occur. Where plant locations have burned, most of those locations have burned infrequently over the last 20 years, during which period the four SCI plant species have increased in distribution and abundance. If fires become more frequent outside of the current fire footprint or more severe in the future, the species could be adversely affected in areas that burn. However, the Navy is expected to continue implementing its SCI Wildland Fire Management Plan (Navy 2009), and we expect that fires will continue to occur in similar areas and affect a limited number of individuals and locations of the four SCI plant species. We do not view fire as a threat to the listed plants, since they have expanded their ranges significantly with the removal of nonnative herbivores.

*Climate Change*

Since listing (42 FR 40682, August 11, 1977), the potential impacts of ongoing, accelerated climate change have become a recognized threat to the flora and fauna of the United States (Intergovernmental Panel on Climate Change (IPCC) 2007, pp. 1–52; PRBO 2011, pp. 1–68). Climate change is likely to result in warmer and drier conditions with high overall declines in mean seasonal precipitation but with high variability from year to year (IPCC 2007, pp. 1–18; Cayan et al. 2012, p. ii; Kalansky et al. 2018, p. 10). SCI has a Mediterranean climatic regime with a significant maritime influence. Current models suggest that southern California will likely be adversely affected by global climate change through prolonged seasonal droughts and through rainfall coming at unusual periods and in different amounts (Pierce 2004, pp. 1–33, Cayan et al. 2005, pp. 3–7, CEPA 2006, p. 33; Jennings et al. 2018, p. iii; Kalansky et al. 2018, p. 10); however, the Channel Islands are not well addressed in these models.

Climate change models indicate an increase in average temperature by 2 to 3 degrees Celsius (°C) (4 to 6 degrees Fahrenheit (°F)) (Representative Concentration Pathway (RCP) 4.5) to 4 to 5 °C (7 to 9 °F) (RCP 8.5) for the San Diego Area of southern California by the end of the century (Jennings et al. 2018, p. 9), with inland changes higher than the coast (Cayan et al. 2012, p. 7). By 2070, a 10 to 37 percent decrease in annual precipitation is predicted (PRBO 2011, p. 40; Jennings et al. 2018, p. iii), although other models predict little to no change in annual precipitation (Field et al. 1999, pp. 8–9; Cayan et al. 2008, p. 26). SCI typically receives less rainfall than neighboring mainland areas (Tierra Data Inc. 2005, p. 4). However, predictions of short-term and long-term climatic conditions for the Channel Islands remain uncertain, and it is currently unknown if the same climate predictions for coastal California (a warmer trend with localized drying, higher precipitation events, and/or more frequent El Niño or La Niña events) equally apply to the Channel Islands (Pierce 2004, p. 31).

Low-level temperature inversions are common along the California coast and Channel Islands, and these inversions form low cloud cover (fog), otherwise known as the marine layer, which has a strong influence on coastal ecosystems and SCI (Navy 2013a, pp. 3.13, 3.26). Although the island has a short rainy season, the presence of fog during the summer months helps to reduce drought stress for many plant species through shading and fog drip, and many species are restricted to this fog belt (Halvorson et al. 1988, p. 111; Fischer et al. 2009, p. 783). Thus, fog could help buffer species from effects of climatic change. However, coastal fog has been decreasing in southern California in recent decades, possibly due to urbanization (which would not affect SCI) or climate change (Williams et al. 2015, p. 1527; Johnstone and Dawson 2010, p. 4537; LaDochy and Witiw 2012, p. 1157). Coastal cloud cover and fog are poorly addressed in climate change models (Qu et al. 2014, pp. 2603–2605).

Warming projections in California, particularly the possibility that the interior will experience greater warming than the coast (Cayan et al. 2012, p. 7), suggest that the fate of coastal fog is uncertain (Field et al. 1999, pp. 21–22; Lebassi-Habtezion et al. 2011, pp. 8–11). One study found an increasing trend in the strength of low-level temperature inversions, which suggests that the marine layer is likely to persist and may even increase (Iacobellis et al. 2010, p. 129). Recent work examining projected changes in solar radiation and cloud albedo (portion of solar radiation reflected back to space by clouds) show projected increases in cloud albedo during the dry season (July–September) and decreases during the wet season (November and December, and March and April) (Clemesha 2020, entire). Such a scenario could moderate the effects of climate change on the Channel Islands and would be expected to reduce its potential threat to island plants, especially on the western shore's lower terraces, where the marine layer is common. Dry season low clouds and fog are particularly important to plant growth, survival, and population dynamics in arid systems through both a reduction in evapotranspiration demand and potentially water deposition (Corbin et al. 2005, p. 511; Johnstone and Dawson 2010, p. 4533; Oladi et al. 2017, p. 94).

Current trends based on meteorological information suggest climate change is already affecting southern California through sea level rise, warming, and extreme events like large storms associated with El Niño events (Sievanen et al. 2018, p. 7). Climate projections suggest more severe droughts or extended dry periods on coastal California via lessened low stratus cloud regime and hydrologic effects of reduced fog delivery (Fischer et al. 2009, pp. 783–799; Sievanen et al. 2018, p. 7). While long-term effects of climate change are typically projected to have major effects in the latter half of

this century (Cayan et al. 2012, p. 24; Clemesha 2020, entire; Kalansky et al. 2018, pp. 19–21), there is increasing uncertainty with longer timeframes. Although climate change is affecting coastal and inland habitat in the United States (Karl et al. 2009, pp. 13–152), the site-specific effects of climate change on SCI are uncertain. We, therefore, focused on a 20- to 30-year window to evaluate changes in climate (precipitation and temperature) in the species status assessments for these five taxa.

During this time period, we do not expect major effects of climate change. Models indicate an increase in average temperature by 1 to 2 degrees Celsius (°C) (2 to 3 degrees Fahrenheit (°F)) (RCP 4.5) to 2 to 3 °C (3 to 4 °F) (RCP 8.5) by 2040 for the San Diego Area of southern California (Jennings et al. 2018, p. 15), with inland changes higher than the coast (Cayan et al. 2012, p. 7). However, in the 20- to 30-year window, climate change may result in more frequent or severe fires, heavy periods of rainfall that could lead to major erosion events, or periods of drought (Kalansky et al. 2018, p. 10). As discussed in the species status assessments, predicting impacts due to climate change are further complicated by uncertainty regarding the timing of increased or decreased rainfall; wetter conditions in the winter and early spring can lead to more growth early in the season, which can provide more fuel for fire later. However, wetter summers and falls can prevent the fuel from drying out enough to burn (Lawson 2019, pers. comm.). Therefore, making predictions about future fire patterns as affected by climate change is difficult.

Less rainfall and warmer air temperatures could limit the range of plant species and affect habitat and prey or forage for SC Bell's sparrow, although there is no direct research on the effects of climate change on any of the species. While SC Bell's sparrow's reproductive success is influenced by rainfall and could be affected by longer term changes in climate, the relationship between reproductive output and rainfall and the impacts of droughts of varying duration and severity on the population are unclear, and the mechanisms driving these relationships are unknown (USFWS 2022a, pp. 58–63). Changes in temperature or rainfall patterns have the potential to affect biotic interactions, such as decoupling the timing of plant phenology versus insect activity. The likely persistence of the marine layer would be expected to help moderate the effects of climate change on the Channel Islands and would be expected to reduce its potential effects to island plants, including nesting and cover substrates for SC Bell's sparrows.

While we recognize that climate change is an important issue with potential effects to listed species and their habitats, information is not available to make accurate predictions regarding its long-term effects to the SCI species addressed in this final rule. However, given the current information available in climate change studies, climate change is unlikely to have major impacts on the SCI species in the next 20 to 30 years, the period for which we are able to make reliable predictions based on the available climate change data and the period under consideration in this determination.

*Reduced Genetic Diversity*

Genetic analysis suggests that SCI bush-mallow has very low genetic variation at both the species and population levels (Helenurm 1997, p. 50; Helenurm 1999, p. 39) and has been observed to have low seed production (Helenurm 1997, p. 50; Junak and Wilken 1998, p. 291; Helenurm 1999, p. 39). Low seed production, in combination with low genetic diversity, can contribute to observed low recruitment in populations (Huenneke 1991, pp. 37–40; Junak and Wilken 1998, p. 291; Helenurm 1999, pp. 39–40). A reduction in occurrence size through years of grazing may have substantially lowered genetic variation (Helenurm 2005, p. 1221), which could decrease genetic fitness and compromise the species' ability to adjust to novel or fluctuating environments, survive disease or other pathogens, survive stochastic events, or maintain high levels of reproductive performance (Huenneke 1991, p. 40). However, data on the genetic variation that existed historically are lacking.

In recent years, the detected numbers of SCI bush-mallow have increased in abundance, although it is unknown how much of this growth can be attributed to clonal growth versus sexual reproduction and new genets. Successful seed collection in 2013 (SERG 2013, pp. 61–64) and the observation of cotyledons in the field provide anecdotal evidence that the species may be reproducing more often by sexual recombination. As the number of individuals (stems) increases, we would expect by probability alone more genetically distinct individuals over time because as the numbers of stems increase, the probability of cross-pollination is increased (Rebman 2019, pers. comm.). However, we do not know whether and how often new genets are produced in the population.

Patches of SCI bush-mallow on SCI contain many clones of individuals but also contain distinct genetic individuals, and there is at least some increase in distribution through seedling recruitment (Munson 2022, pers. comm.). However, it is still likely that many patches, especially the small or more isolated ones, comprise only closely related individuals that share alleles, impeding the likelihood of successful sexual reproduction (Helenurm 1999, pp. 39–40). The apparent historical loss of genetic diversity resulting in current low genetic variation is a potential threat for which there is no immediate solution or amelioration. However, currently, low genetic diversity does not seem to preclude the ability of the species to sustain populations over time on the island; historical diversity is unknown, and it may have always been low for this species. This species has increased in numbers and distribution from that known at the time of listing (42 FR 40682, August 11, 1977) and has sustained populations through current levels of habitat disturbance, and we expect that genetic variants within and among patches are increasing, however slowly.

*Conservation Actions and Regulatory Mechanisms*

Pursuant to the Sikes Act (16 U.S.C. 670 *et seq.*), as amended, the Navy manages land and water resources on the island under the SCI INRMP (Navy 2013a). The goal of the INRMP is to maintain long-term ecosystem health and minimize impacts to natural resources consistent with the operational requirements of the Navy's training and testing mission (Navy 2013a, p. 1–9). Specifically, the INRMP identifies key components that: (1) Facilitate sustainable military readiness and foreclose no options for future requirements of the Pacific Fleet; (2) protect, maintain, and restore priority native species to reach self-sustaining levels through improved conditions of terrestrial, coastal, and nearshore ecosystems; (3) promote ecosystem sustainability against testing and training impacts; and (4) maintain the full suite of native species, emphasizing endemic species.

The SCI INRMP outlines appropriate management actions necessary to conserve and enhance land and water resources, including invasive species control island-wide and, therefore, near listed and sensitive species; biosecurity protocols; public outreach to promote compliance; restoration of sites that support sensitive plants; and habitat enhancement for sensitive and listed

species. In addition, the Fire Management Plan (Navy 2009) outlines a strategy to reduce the impacts from fires, including fuel break installation to minimize fire spread and fire suppression inside and outside of SHOBA to protect endangered, threatened, and other priority species (Navy 2013a, p. 3.45; Vanderplank et al. 2019, pp. 15, 18–19; Munson 2022, pers. comm.). The INRMP outlines management strategies for plant communities and sensitive species, including recommended avoidance and minimization measures that the Navy may consider during the site approval and project review process (Navy 2013a, pp. 4–23, 4–28).

The SCI INRMP also provides the mechanism for compliance with other Federal laws and regulations such as the Federal Noxious Weed Act of Act of 1974 (7 U.S.C. 2801), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), the Resources Conservation and Recovery Act (42 U.S.C. 6901), and the Soil Conservation Act (16 U.S.C. 3B). Based on the ongoing obligation the Navy has to implement the INRMP, the Navy's commitment to modify the INRMP to address changing land and water resource management needs, including future training activities, and the Navy's commitment to develop and implement a conservation agreement specific to these five species, we expect the INRMP and other conservation measures to remain in effect and afford protection to these five species regardless of their listing status. Measures specific to species or threats that are the subject of this final rule are discussed below.

*Migratory birds*—The INRMP outlines steps to ensure compliance with Executive Order (E.O.) 13186 (''Responsibilities of Federal Agencies to Protect Migratory Birds''; see 66 FR 3853, January 17, 2001) and the 2014 memorandum of understanding (MOU) between the Department of Defense (DoD) and the Service to promote the conservation of migratory birds, which stipulates responsibilities for DoD. The MOU outlines a collaborative approach to promote the conservation of bird populations, and the INRMP is required to address migratory bird conservation regardless of status under the Act. As part of the program outlined under the INRMP, the Navy supports the SC Bell's sparrow population monitoring program. Population monitoring provides a robust population estimate and facilitates planning to avoid and minimize impacts of Navy training and infrastructure projects.

*Erosion*—The Navy monitors and evaluates soil erosion on SCI and uses multiyear data to assess priorities for remediation (SERG 2006, entire; SERG 2015a, entire). The INRMP includes a management objective to ''Conserve soil resources, especially erodible soils near the heads of canyons, knickpoints of gullies, and areas threatening the uninterrupted continuation of the military mission or special status species, to provide drainage stability, native vegetation cover, and soil water holding capacity and protect site productivity, native plant cover, receiving waters, and access for the military mission'' (Navy 2013a, p. 3–35). Efforts are made to restore areas where erosion occurs, through revegetation efforts and the installation of erosion control materials (SERG 2016, p. 2). The Navy incorporates erosion control measures into all site feasibility studies and project design to minimize the potential to exacerbate existing erosion and avoid impacts to listed species. The INRMP requires that all projects include erosion control work (Navy 2013a, p. 3–33). These conservation actions include best management practices, choosing sites that are capable of sustaining disturbance with minimum soil erosion, and stabilizing disturbed sites (Navy 2013a, pp. 3.33–3.37).

*Nonnative species*—The Navy has monitored and controlled the expansion of highly invasive, nonnative plant species on an ongoing basis since the 1990s (O'Connor 2022, pers. comm.), and primary target species have included *Brassica tournefortii* (Saharan mustard), *B. nigra* (black mustard), *Foeniculum vulgare* (fennel), *Asphodelus fistulosus* (aspohodel), *Stipa miliacea* (smilo grass), *Ehrharta calycina* (African veldt grass), *Plantago coronopus* (buckhorn plantain), *Tragopogon porrifolius* (salsify), and *Carpobrotus edulis* (iceplant); additional priority species may also be controlled as they are located (*e.g.,* SERG 2016, pp. 45–46). In general, the Navy treats more than 100,000 individuals of these various species annually. Control of these invasive plants benefits the ecosystem on SCI by reducing their distribution and minimizing the potential that they will invade habitat occupied by listed and at-risk taxa. Because invasive species introductions are more likely to occur along roadsides and because roads function as corridors for the spread of invasive species propagules, much of the invasive species treatment on the island focuses on roadsides; however, other areas highly susceptible to invasive species introductions (such as graded areas, soil stockpiles, and mowed areas) also are focal areas for control. High-priority invasive plants are treated at locations across the island. This control strategy has minimized the need to treat invasive plant species within areas occupied by federally listed plants.

While many conservation measures to limit the introduction and spread of nonnative plants are included in the INRMP (Navy 2013a, pp. 3.289–3.290), the Biosecurity Plan (Navy 2016, entire) will help more effectively control the arrival of potentially invasive propagules. The plan works to prevent and respond to new introductions of nonnative species and bio-invasion vectors. The Navy is currently working on an instruction that will contain feasible, enforceable measures from the plan. Through implementation of this plan and the ongoing island-wide nonnative plant control program, potential impacts from nonnative plants are expected to be minimized (O'Connor 2022, pers. comm.; Munson 2022, pers. comm.)

*Nonnative predators*—The current nonnative wildlife program focuses on island-wide nonnative predator management, which was initiated by the Navy in 1992 (USFWS 2008b, p. 172). Complete eradication of feral cats, black rats, and house mice on SCI is currently infeasible. Nonnative wildlife management is part of the San Clemente loggerhead shrike recovery program and focuses on control of feral cats throughout the island and rodent control near San Clemente loggerhead shrike nest sites (Meiman et al. 2015, p. 2). This program affords some protection to the SC Bell's sparrow, primarily through cat removal, and will likely continue as part of the ongoing San Clemente loggerhead shrike recovery program regardless of the listing status of the SC Bell's sparrow. The Navy has removed numerous cats, on average 211 annually (2001–2016; Burlingame et al. 2018, p. 29).

*Fire*—The Navy implements the SCI Wildland Fire Management Plan (Navy 2009, entire), which is focused on fire prevention, fuels management, and fire suppression. Implementation of the fire management plan provides planning guidelines to reduce the potential for ignitions during the drier times of the year, ensures that adequate fire suppression resources are present to protect resources, and provides flexibility for the timing of military training and to ensure that adequate fire suppression resources are present with an increased level of training activities (Navy 2009, entire). These measures minimize the frequency and spread of fires that could result in impacts to

habitat and to individuals of the five species. The Navy will continue to modify this plan to address future training impacts and has committed to make these modifications in accordance with the associated conservation needs of the five SCI species.

*SC Bell's sparrow*—Current and ongoing conservation measures described above minimize impacts of threats to SC Bell's sparrow. Additionally, the SCI INRMP is currently being updated to include prioritization of conservation and management within four core SC Bell's sparrow habitat areas (approximately 2,604 ha; Booker 2022, pers. comm.). These areas were selected to ensure representation (*e.g.,* multiple plant communities) and redundancy (*e.g.,* multiple areas). They include high-density SC Bell's sparrow habitat, assumed source populations, refugia spread geographically, and areas of elevation and topographic importance to SC Bell's sparrow. The intent of priority conservation areas is to facilitate future planning in a manner that avoids impacts to important SC Bell's sparrow habitat, and to protect the population against stochastic and catastrophic events (USFWS 2022a, p. 66).

Final delineation of areas and management strategies will be identified in the SC Bell's sparrow management plan, which is currently in development. With the identification of core habitat areas in the INRMP, and management of these areas consistent with the management plan, the Navy will: (1) Preclude significant development within these areas, to the extent feasible; (2) prioritize these four areas for protection under fire management plans; and (3) prioritize these four areas for invasive species control, as needed (USFWS 2022a, p. 66) to help manage for the SC Bell's sparrow. While we expect that incorporation of SC Bell's sparrow core habitat areas into the INRMP will improve coordination of conservation measures for the SC Bell's sparrow, the Navy's current and ongoing management described above minimizes the impacts of threats to SC Bell's sparrow and its habitat under current training regimes. Because of the legal obligation to implement the INRMP under the Sikes Act, the Navy will modify the INRMP and will develop and implement additional conservation measures as needed to address future impacts to SC Bell's sparrow due to erosion and fire. The SC Bell's sparrow management plan will highlight important management areas to conserve and monitor to ensure the continued conservation of this taxon in the future.

*Summary of conservation actions and regulatory mechanisms*—The Sikes Act requires DoD installations to prepare and implement INRMPs that provide for the conservation and rehabilitation of natural resources, including non-listed species. Consequently, due to this requirement, the conservation actions outlined in the INRMP are expected to continue, regardless of the listing status of the five species. While changes to military training and training footprints are projected in the future, the Navy will implement conservation measures to address resulting impacts in order to meet the goals of the INRMP. Additionally, changes to training have and will be subject to environmental review under applicable laws and regulations, including the National Environmental Policy Act and the Navy's site approval and review process, which includes identifying avoidance and minimization measures for plant communities and sensitive species, including measures recommended in the SCI INRMP (Navy 2013a, pp. 4–23, 4–28). If these five species are delisted, they would continue to be considered sensitive species and any impacts would be evaluated through these processes (O'Connor 2022, pers. comm.). Furthermore, the Navy is ''committed to continuing that partnership as our agencies implement the post-delisting monitoring plan and work to complete the SCI INRMP revision and the anticipated conservation agreement'' (Golumbfskie-Jones 2022, *in litt,* p. 2).

*Summary of Factors Influencing Viability*

At the time of listing (42 FR 40682, August 11, 1977), the biggest threat to the SCI species was habitat destruction and modification due to feral grazers. Since the removal of the last feral herbivores, vegetation is recovering, and habitat conditions have improved substantially. Currently, all five species are now more widely distributed on the island with greater estimated numbers of individuals than were previously known.

*SC Bell's Sparrow*—We assessed remaining threats to SC Bell's sparrow individuals and habitat, including predation, drought, climate change, military training, and fire. Ongoing predator control programs are implemented to control nonnative predator species on the island, and the population of SC Bell's sparrow has grown despite ongoing impacts. Drought could potentially affect SC Bell's sparrow, as reduced nesting success has been reported in drier years, especially if droughts become more frequent or severe. While the effects of drought on productivity of the island-wide population are not fully understood, and additional data are needed to clarify this relationship, the population has rebounded quickly from past droughts and is expected to retain its ability to do so in the future. Likewise, climate change may influence or affect vegetation and thus nesting and foraging habitat (USFWS 2022a, p. 63). The magnitude of this rangewide threat and how it may affect the SC Bell's sparrow are unknown at this time, but significant impacts from climate change are unlikely to occur in the next 20 to 30 years (USFWS 2022a, pp. 63–64).

Training within the current footprint that could have high-intensity impacts occurs on less than 20 percent of the island, and those areas that are intensively used are currently either unoccupied or already support low densities of SC Bell's sparrows. The largest potential known threat to the SC Bell's sparrow is fire. The Navy actively implements fire prevention and containment measures as part of the fire management plan. Thus, although fire currently impacts SC Bell's sparrows and their habitat, current fire patterns do not appear to pose a threat to SC Bell's sparrow population viability.

*Plants*—For the plant species, we assessed threats to individuals and habitat including land use, erosion, the spread of nonnatives, fire and fire management, and climate change. While full impacts of invasive species on the four plant species are unknown, the effects are likely minimal or localized, given the expansion of the species on the island despite the presence of invasive species. Climate change may influence the plant species by affecting germination or viability of adult plants if drought or increasing temperatures result in significant changes in vegetation communities on SCI. The magnitude of this rangewide threat and how it may affect the plant taxa is unknown at this time, but significant impacts from climate change are unlikely to occur in the next 20 to 30 years (USFWS 2022b, p. 57; USFWS 2022c, pp. 66–67; USFWS 2022d, p. 51; USFWS 2022e, p. 53).

For all four plant species, we considered major threats to be impacts of military training and fire. For SCI paintbrush, SCI lotus, and SCI larkspur, we also considered erosion resulting from training or proximity to roads to be a major threat. Less than 1 percent of the current population of SCI lotus occurs within training areas where there is an increased potential for erosion caused

by military activities. Approximately 13 percent of the current population of SCI bush-mallow lies within training areas, but none of these plants are in AVMAs that are the training areas with the greatest potential for erosion. Less than 1 percent of the current population of SCI lotus occurs within training areas where there is an increased potential for erosion caused by military activities. Finally, of the SCI paintbrush current distribution, 144 individuals in 6 watersheds are located within 30 m (100 ft) of a road or the AVMC.

To determine the status of the plant species in current training footprints, we ranked the levels of these threats in each watershed to evaluate the extent to which the species are exposed to and potentially affected by these threats (USFWS 2022b, pp. 59–60; USFWS 2022c, pp. 69–70; USFWS 2022d, pp. 54–55; USFWS 2022e, pp. 56–57). Level of threats were categorized as none, low, or moderate. A low level of threats is defined as threats that could potentially affect less than 50 percent of the locations, individuals, or area within the watershed. A moderate level of threat is defined as threats that could potentially affect 50 percent or more of the locations, individuals, or area within the watershed. Table 6, below, indicates the percentages and numbers of watersheds, and the estimated individuals in those watersheds that were categorized as having no identified or low threats, or moderate threats. Most watersheds where plant taxa occur are in areas with no or low exposure to threats affecting less than half of the locations, individuals, or area occupied.

TABLE 6—PERCENTAGES AND NUMBERS OF WATERSHEDS AND INDIVIDUAL PLANTS ASSESSED TO HAVE VARYING LEVELS OF THREATS ON SAN CLEMENTE ISLAND (SCI)

[USFWS 2022B, pp. 59–60; USFWS 2022C, pp. 69–70; USFWS 2022D, pp. 54–55; USFWS 2022E, pp. 56–57]

| Species | No or low threats in watersheds [% (n)] | No or low threats to individuals [% (n)] | Moderate threats in watersheds [% (n)] | Moderate threats to individuals [% (n)] |
|---|---|---|---|---|
| SCI lotus | 78 (45) | 90 (18,640) | 22 (13) | 10 (2,013) |
| SCI paintbrush | 75 (65) | 85 (35,702) | 25 (22) | 15 (6,402) |
| SCI larkspur | 100 (22) | 100 (18,956) | 0 (0) | 0 (0) |
| SCI bush-mallow | 73 (11) | 60 (3,345) | 27 (4) | 40 (2,266) |

*Species Condition*

Here, we discuss the current condition of each species, taking into account the risks that are currently occurring to those populations, as well as management actions that are currently occurring to address those risks.

*SC Bell's sparrow*—The population as of 2018 was estimated at 2,676 territories (5,284 individuals) island-wide. Overall, the population of SC Bell's sparrows on SCI has increased since listing and between 2013 and 2018 has withstood current stochastic effects. Given these trends and the relatively large population size, we consider this population currently to be highly resilient to stochastic factors. While we consider SC Bell's sparrow to consist of a single population, its distribution across the island and ability to use a range of elevations and habitats indicate the species' adaptability and that it is unlikely that the entire population of the species would be affected by a single catastrophic event.

*Plants*—In our evaluation of current conditions, for each plant species and watershed, we developed and assigned condition categories. To assess the resiliency of plant species, we assessed the overall condition of the population by evaluating occupancy, locations, and individuals within each watershed. We categorized our assessed resiliency scores by watershed based on number of individuals: ''very high'' means populations with 500 or more individuals; ''high'' means populations with 100–499 individuals; ''moderate'' means populations with 10–99 individuals; and ''low'' means populations with fewer than 10 individuals. We also examined population trends, which indicate the ability of the species to withstand and recover from stochastic events.

Resiliency was considered higher within watersheds supporting a greater number of individuals over time; however, if all of the individuals within a watershed were in just one location, we assumed that they are less resilient than a watershed with the same number of individuals that are spread out across multiple locations, as plants will be more likely to sustain populations through stochastic events if one localized event is unable to affect all the plants in the entire watershed.

Because few comprehensive surveys have been conducted for plant species on SCI, data from 2011 and 2012, which represent the most recent comprehensive surveys, were supplemented with prior and subsequent data, following a rule set to exclude and buffer data that might result in double counting, and to exclude occurrence data more than 15 years old. Because of a lack of pre- and post-fire surveys, numbers of individuals of SCI lotus and SCI paintbrush (the two species most likely to be negatively affected by severe fires) in watersheds that burned were adjusted to assume some mortality from two severe fires in the last 15 years (USFWS 2022d, pp. 56–57; USFWS 2022e, pp. 58–60). Adjusted numbers of locations and individuals were then used to categorize resiliency in each watershed as low, moderate, high, or very high (table 7).

TABLE 7—SAN CLEMENTE ISLAND (SCI) WATERSHEDS WITH PLANT SPECIES HAVING HIGH OR VERY HIGH RESILIENCE

| Species | Number of watersheds with ''very high'' and ''high'' resilience (occupied watersheds) | Percent of individuals that occur in watersheds rated with ''very high'' and ''high'' resilience |
|---|---|---|
| SCI paintbrush | 48 (87) | 96 |
| SCI lotus | 22 (57) | 92 |
| SCI larkspur | 14 (22) | 93 |

TABLE 7—SAN CLEMENTE ISLAND (SCI) WATERSHEDS WITH PLANT SPECIES HAVING HIGH OR VERY HIGH RESILIENCE—Continued

| Species | Number of watersheds with ''very high'' and ''high'' resilience (occupied watersheds) | Percent of individuals that occur in watersheds rated with ''very high'' and ''high'' resilience |
|---|---|---|
| SCI bush-mallow | 9 (15) | 96 |

Most individuals of each of the plant species occur in watersheds with high or very high resilience, which suggests that most watersheds are likely to be able to withstand stochastic events. While all four plant species are considered to consist of one population, their distributions across multiple watersheds with a variety of habitat types, elevations, and slopes also make it unlikely that the entire population of any of the species would be affected by a catastrophic event. Genetic variation in SCI bush-mallow is low for an island endemic, which, coupled with its clonal nature, could potentially make the species less able to adapt to changing environmental conditions. However, low genetic diversity does not seem to be precluding the species from sustaining itself on the island.

*Future Conditions*

To assess current threats and future conditions, we evaluated the proportion of each population exposed to anthropogenic stressors under baseline conditions and considered different future scenarios for impacts of military training and fire: status quo (baseline impacts), and moderate or high increases in fire severity and training within the existing frequent fire and training footprint. We also considered these scenarios assuming moderate and low recruitment for the plant species, and high and low densities for SC Bell's sparrow. While specific effects of climate change are uncertain and were not modeled, increases in fire severity, which could result from either increased training or from effects of climate change, and low recruitment/density serve as proxies for potential effects. We used a 20- to 30-year timeframe for modeling future conditions because, beyond this timeframe, the impacts of climate change on SCI, specifically the persistence of the fog belt and the timing and patterns of fog and rainfall, are uncertain, making predictions unreliable.

*SC Bell's sparrow*—We modeled the future condition of SC Bell's sparrow over a 20- to 30-year timeframe given two different scenarios of future impacts from military training and fire, the two most significant current and future threats. Using both a low- and high-density estimate (calculated by manipulating the lowest and highest density estimates for each habitat stratum measured between 2013 and 2018 by one standard error), we calculated the estimated number of territories for each stratum under two potential future scenarios: (1) a ''status quo'' scenario in which conditions remain similar to those observed between 2013 and 2018 (*i.e.,* no changes in training intensity, or fire pattern or frequency), and (2) an ''increased impacts'' scenario in which increased impacts from training and fire significantly reduce the suitability of habitat within existing training areas and frequent fire footprints. For the second scenario, we consider that the area within the training and frequent fire footprints would no longer be suitable as habitat, and we report the number of SC Bell's sparrows that we estimated would be supported outside the training and frequent fire areas. This calculation provided an estimate of the minimum number of territories that could be supported outside of projected fires and training area impacts within each stratum. We summed the territories in each stratum for an island-wide estimate, giving a range from low to high densities (table 8).

TABLE 8—NUMBERS OF TERRITORIES AND ADULTS OF SC BELL'S SPARROW UNDER RECENT AND FUTURE SCENARIOS ON SAN CLEMENTE ISLAND

| SC Bell's sparrow | Data from 2013–2018 | Future projections (20 to 30 years) | |
|---|---|---|---|
| | | ''Status quo'': No further impacts to the current amount of habitat | Increased impacts that will result in minimal habitat |
| Territories | 1,494–3,859 | 1,449–4,650 | 1,042–3,226 |
| Adult birds | 2,988–7,718 | 2,899–9,300 | 1,932–6,154 |

Training within the current footprint that could have high-intensity impacts occurs on less than 20 percent of the island, and those areas that are intensively used are currently either unoccupied or already support low densities of SC Bell's sparrows. Our analysis demonstrates that, with current and future training, an estimated 966 to 3,077 (USFWS 2022a) SC Bell's sparrow territories would likely persist outside the highly used training areas on SCI. The largest potential known threat to the SC Bell's sparrow is fire. The Navy actively implements fire prevention and containment measures as part of the fire management plan. Thus, although fire currently impacts SC Bell's sparrows and their habitat, based on current fire patterns and the fire conservation measures the Navy will continue to implement in the future as part of their fire management plan, we have determined that future fire does not appear to pose a threat to SC Bell's sparrow population viability.

*Plants*—As recovery of plant communities on SCI continues, the number of individuals within watersheds and number of occupied watersheds are expected to continue to increase. While existing data indicate that numbers and distribution of the plant species are greater than in the past, the rates at which groups of plants expand over time are unknown. Therefore, we modeled recruitment at moderate and low levels for SCI paintbrush and SCI lotus. Because SCI

bush-mallow currently appears to be reproducing primarily clonally rather than through sexual reproduction and exhibits low seed production, we modeled low and no recruitment to account for this condition. Because of SCI larkspur's long dormancy periods, we do not know how many individuals are present at any point in time and did not include recruitment in the modeling to avoid overestimating growth (*i.e.,* apparent changes in abundance or distribution could be accounted for by individuals breaking dormancy rather than through recruitment of new individuals). As noted above under *Species Condition,* for purposes of modeling current and future conditions, the current baseline numbers of individuals of SCI lotus and SCI paintbrush (the two species most likely to be negatively affected by severe fires) were adjusted to assume some mortality from two severe fires in the last 15 years (USFWS 2022d, pp. 56–57; USFWS 2022e, pp. 58–60), so numbers presented here differ slightly from estimated current distribution and abundance.

To model fire severity, which could result from increased training or effects of climate change, we used the frequent fire footprint (burned two or more times) from the past 20 years to project where future fires are likely to occur. To model increases in fire severity, we assumed greater numbers of individuals would be affected by fire and removed from the population. Because SCI larkspur does not appear to be significantly affected by fire, likely due to its dormant period coinciding with periods when fires are more likely, we only included increased training in our modeling of future conditions for that plant.

To model effects of land use and training, we used the current and expected future footprints of training areas. Using the percent of individuals that occur either within a training area or near a road, we calculated the total number of individuals that could be affected by increased training in that watershed. We assumed an increasing number of locations and individuals would be affected by increased training intensity. The results are presented below in table 9.

TABLE 9—WATERSHEDS ON SAN CLEMENTE ISLAND (SCI) OF PLANT SPECIES WITH HIGH AND VERY HIGH RESILIENCE UNDER CURRENT AND FUTURE SCENARIOS

| | Number of watersheds with high or very high resilience | Estimated number of occupied watersheds (with low and moderate recruitment) | Estimated population size (ranges represent low and moderate recruitment) |
|---|---|---|---|
| **SCI paintbrush** | | | |
| Current data | 48 | 87 | 42,104 |
| Future scenario: Status quo | 48 | 87 (92–97) | 43,489–51,773 |
| Future scenario: Increased fire/training | 42 | 85 (90–95) | 40,433–48,119 |
| Future scenario: Extreme fire/training | 41 | 81 (86–91) | 38,087–45,326 |
| **SCI lotus** | | | |
| Current data | 22 | 57 | 20,743 |
| Future scenario: Status quo | 23 | 57 (62–67) | 21,595–25,708 |
| Future scenario: Increased fire/training | 21 | 57 (62–67) | 20,628–24,128 |
| Future scenario: Extreme fire/training | 19 | 57 (62–67) | 18,987–22,603 |
| **SCI larkspur** | | | |
| Current data | 14 | 22 | 18,956 |
| Future scenario: Status quo | 14 | 22 | 18,956 |
| Future scenario: Increased fire/training | 14 | 22 | 18,900 |
| Future scenario: Extreme fire/training | 14 | 22 | 18,844 |
| **SCI bush-mallow** | | | |
| Current data | 9 | 15 | 5,611 |
| Future scenario: Status quo | 9 | 15 | 5,611–5,892 |
| Future scenario: Increased fire/training | 9 | 15 | 5,200–5,461 |
| Future scenario: Extreme fire/training | 9 | 15 | 4,131–4,337 |

For our analysis of the impacts that recently proposed training areas will have on SCI plant species, we anticipated that erosion due to training would likely occur up to 500 feet from each training area, and plants that occur within this area could be impacted. Recently proposed training areas will not affect watersheds where SCI lotus and SCI bush-mallow are currently present, and thus we do not anticipate additional impacts to these species associated with recently proposed training areas. For SCI larkspur, we found that 42 individuals in 1 watershed would be affected. Finally, for SCI paintbrush, 50 individuals in 5 watersheds could be potentially impacted by future training within recently proposed training areas. This analysis estimated impacts under both increased and extreme training scenarios. Under the increased training scenario, the estimated population size of SCI paintbrush would be 40,433–48,119 individuals. Under the extreme training scenario, the estimated population size would be 38,087–45,326 individuals.

*Limitations and Uncertainties*

Our models project an estimated number of occupied watersheds and individuals for plants and estimated numbers of territories and adults for SC Bell's sparrow under a range of possible future conditions. However, there are several limitations and uncertainties associated with our projections (USFWS 2022a, pp. 77–78; USFWS 2022b, pp. 68–69; USFWS 2022c, pp. 77–78;

USFWS 2022d, pp. 69–70; USFWS 2022e, pp. 72–73). These include differences in survey methodologies over time and lack of information regarding demographic and life-history characteristics of the species, which required us to make several assumptions in our estimates and projections. We presumed that the four plant taxa are extant, even if not surveyed in the past 20 years, where the associated flora remain and quality habitat is still present. We also assumed that military training and fire would generally affect the same areas they have historically, amended to address recently proposed training areas, and we made several assumptions about the extent of future impacts within these geographic footprints. Because of the Navy's implementation of the INRMP, other resource management plans described previously, and the conservation agreement for the five SCI species that is currently in development, we also concluded that the Navy will continue to manage and protect habitat where these five taxa occur on SCI. While there are several uncertainties and assumptions, because our projections represent the best available scientific and commercial information, our analysis provides an adequate basis for assessing the current and future viability of the species.

*Summary of Future Conditions*

While all five species might experience reductions in numbers of individuals or occupied watersheds or habitat within the existing fire and training footprint under the most extreme scenarios considered, all species are expected to remain resilient. Each species would continue to occupy a broad distribution on the island across a variety of habitats under status quo and increased threat scenarios, so representation and redundancy are not expected to decrease significantly.

We note that, by using the SSA framework to guide our analyses of the scientific information documented in the SSA reports, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporated the cumulative effects into our SSA analyses when we characterized the current and future condition of the species. To assess the current and future conditions of the species, we undertook an iterative analysis that encompassed and incorporated the threats individually and then accumulated and evaluated the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our SSA assessment integrated the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

We lack specific information on how various threats may interact, but potential cumulative effects include interactions of military training, fire, invasive species, and climate change. For example, effects of climate change could increase the frequency or severity of fire. Although we lack specific information on effects of climate change, we assumed in our modeling of future conditions that increased fire could result from either increased training or from climate change, or a combination. We also modeled a range of increased impacts of training and/or fire, as well as low and moderate recruitment or densities, and used conservative approaches to estimate resulting populations to account for the possibility of cumulative effects. We found in our evaluation of current and future conditions that all five species are likely to continue to maintain close to current levels of resiliency, redundancy, and representation, despite the potential for cumulative effects.

**Determinations of Species Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of an ''endangered species'' or a ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

*Status Throughout All of Its Range*

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that the primary threats to SC Bell's sparrow, SCI paintbrush, SCI lotus, SCI larkspur, and SCI bush-mallow identified at the time of and since listing have been eliminated or reduced. At the time of listing (42 FR 40682, August 11, 1977), we considered habitat destruction and modification caused by nonnative herbivores (Factor A) to be the primary cause of decline for all five species. Since removal of all nonnative herbivores was completed in 1992, plant communities on the island are recovering, and habitat conditions are improving for all species. The current sizes and distributions of each of the species are greater than were previously known.

Currently and in the future, individuals and habitat of each of the five species may be affected by military training activities (Factors A and E), erosion (Factor A), invasive species (Factors A and E), and fire and fire management (Factors A and E). These remaining threats to the species, including fire, erosion, and invasive species, are managed by the Navy through implementation of the SCI INRMP, Fire Management Plan, Erosion Control Plan for SCI, and other associated management plans. Implementation of avoidance and minimization measures and programs outlined in these plans is expected to continue regardless of the listing status of the five species. In addition, the Navy will continue to consider these five species and incorporate avoidance and minimization measures for land use activities, including infrastructure projects and military training proposals as part of the site approval and project review process. Thus, existing conservation programs and regulatory mechanisms, such as the INRMP, are expected to continue to provide protections to these species, regardless of listing status. Because the Channel Islands are not well addressed in current climate models and there is uncertainty regarding how climate change may affect habitats and species on SCI, we were not able to assess its long-term effects, but because of moderating effects of maritime influence on SCI, we do not expect major impacts over the next 20 to 30 years. Our evaluation of current and future conditions indicates all five species are likely to continue to maintain close to current levels of resiliency, redundancy, and representation.

In addition to threats in common to all five SCI species, small population size (Factor E) was formerly considered a threat to SC Bell's sparrow, with a low of 38 individuals reported in 1984.

However, the species is now more widely distributed on the island, and population estimates have been consistently over 4,000 adults since 2013. Predation by black rats and feral cats (Factor C) was also considered a threat to SC Bell's sparrow at the time of listing. While predation on SC Bell's sparrow still occurs, the Navy implements predator control on SCI, and predation on SC Bell's sparrow does not appear to be limiting the population. The species is currently considered to be resilient and is expected to maintain close to current levels of resiliency, redundancy, and representation under a range of projected future conditions. Thus, after assessing the best available information, we determine that San Clemente Bell's sparrow is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range.

No additional threats beyond those common to all five SCI species have been identified for SCI paintbrush. With removal of nonnative herbivores, and conservation efforts implemented by the Navy, numbers and distribution of SCI paintbrush have increased. The SCI paintbrush population numbered approximately 1,000 individuals in 1984. The current island-wide population is estimated at 42,104 individuals across 87 watersheds. Most of these individuals currently occur in watersheds with high or very high resiliency. Additionally, the species is expected to maintain close to current levels of resiliency, redundancy, and representation under a range of projected future conditions. Thus, after assessing the best available information, we determine that San Clemente Island paintbrush is not in danger of extinction now or likely to become so in the foreseeable future throughout all its range.

No additional threats beyond those common to all five SCI species have been identified for SCI lotus. With removal of nonnative herbivores, and conservation efforts implemented by the Navy, numbers and distribution of SCI lotus have increased. While the historical range and distribution of SCI lotus is not known, its distribution has increased from the six locations noted in 1984 (USFWS 1984, pp. 17, 35). The current island-wide population is estimated at 20,743 individuals across 57 watersheds. The majority of these individuals currently occur in watersheds with high or very high resiliency. Additionally, the species is expected to maintain close to current levels of resiliency, redundancy, and representation under a range of projected future conditions. Thus, after assessing the best available information, we determine that San Clemente Island lotus is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range.

No additional threats beyond those common to all five SCI species have been identified for SCI larkspur. While the historical range and distribution of SCI larkspur is not known, its distribution has increased from the six to seven locations noted in 1984 (USFWS 1984, pp. 17, 35). The current island-wide population is estimated at 18,956 individuals within 22 watersheds. Most of these individuals currently occur in watersheds with high or very high resiliency. Additionally, the species is expected to maintain close to current levels of resiliency, redundancy, and representation under a range of projected future conditions. Fire (Factors A and E) is thought to currently not significantly affect SCI larkspur, but changes in timing, frequency, or severity of fire could potentially negatively affect the species. However, the Navy's implementation of fire management is expected to continue to minimize the risk of fire to SCI larkspur. Thus, after assessing the best available information, we determine that San Clemente Island larkspur is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range.

In addition to threats common to all five SCI species, reduced genetic diversity (Factor E) has been identified as a potential threat for SCI bush-mallow. However, currently, low genetic diversity does not seem to be precluding the species' ability to sustain itself on the island. With removal of nonnative herbivores, and conservation efforts implemented by the Navy, numbers and distribution of SCI bush-mallow have increased. At the time of listing, SCI bush-mallow was known from only three locations (42 FR 40682, August 11, 1977). The current island-wide population is estimated at 5,611 individuals across 15 watersheds. Most of these individuals currently occur in watersheds with high or very high resiliency. Additionally, the species is expected to maintain close to current levels of resiliency, redundancy, and representation under a range of projected future conditions. Thus, after assessing the best available information, we determine that San Clemente Island bush-mallow is not in danger of extinction now or likely to become so in the foreseeable future throughout all its range.

*Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the SC Bell's sparrow, SCI paintbrush, SCI lotus, SCI larkspur, and SCI bush-mallow are not in danger of extinction or likely to become so in the foreseeable future throughout all of their ranges, we now consider whether any of these species may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant, and (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for SC Bell's sparrow, SCI paintbrush, SCI lotus, SCI larkspur, and SCI bush-mallow, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened.

The SC Bell's sparrow, SCI paintbrush, SCI lotus, SCI larkspur, and SCI bush-mallow are found solely on San Clemente Island, an area of approximately 56 square mi (145 square km, 36,073 acres (ac), or 14,598 hectares (ha)). Each of these species is a narrow endemic that functions as a single, contiguous population. While we divided each of the species' ranges into analysis units in order to quantify threats and analyze resiliency, these units are not meant to represent ''populations'' in a biological sense; rather, these units were designed to facilitate assessing and reporting current and future resilience. Given the species' small ranges, and the Navy's management to eliminate or reduce threats through implementation of the SCI INRMP and other associated management plans, there is no biologically meaningful way to break the limited ranges of these species into portions, and the threats that the species

face affect the species throughout their entire ranges. This means that no portions of the species' ranges have a different status from their rangewide status. Therefore, no portion of the species' ranges can provide a basis for determining that the species are in danger of extinction now or likely to become so in the foreseeable future in a significant portion of their ranges, and we find that San Clemente Bell's sparrow, San Clemente Island paintbrush, San Clemente Island lotus, San Clemente Island larkspur, and San Clemente Island bush-mallow are not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of their ranges. This finding does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Sup. 3d, 946, 959 (D. Ariz. 2017), because, in reaching these conclusions, we did not need to consider whether any portions are significant and therefore did not apply the definition of ''significant'' in the Final Policy on Interpretation of the Phrase ''Significant Portion of its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578, July 1, 2014) that those court decisions held was invalid.

*Determination of Status*

Our review of the best available scientific and commercial information indicates that the San Clemente Bell's sparrow, San Clemente Island paintbrush, San Clemente Island lotus, San Clemente Island larkspur, and San Clemente Island bush-mallow do not meet the definition of an endangered species or a threatened species in accordance with sections 3(6), 3(20), and 4(a)(1) of the Act. Therefore, we are delisting (removing) the San Clemente Bell's sparrow, San Clemente Island paintbrush, San Clemente Island lotus, San Clemente Island larkspur, and San Clemente Island bush-mallow from the Lists of Endangered and Threatened Wildlife and Plants.

**Effects of This Final Rule**

This final rule will revise 50 CFR 17.11(h) to remove San Clemente Bell's sparrow (*Artemisiospiza belli clementeae*), which is listed as San Clemente sage sparrow (*Amphispiza belli clementeae*), from the Federal List of Endangered and Threatened Wildlife, and will revise 50 CFR 17.12(h) to remove San Clemente Island bush-mallow (*Malacothamnus clementinus*), San Clemente Island paintbrush (*Castilleja grisea*), San Clemente Island lotus, (*Acmispon dendroideus* var. *traskiae*), and San Clemente Island larkspur (*Delphinium variegatum* ssp. *kinkiense*) from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, will no longer apply to these species. Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect these species. There is no critical habitat designated for any of these species.

**Post-Delisting Monitoring**

Section 4(g)(1) of the Act requires us to monitor for not less than 5 years the status of all species that are delisted due to recovery. Post-delisting monitoring refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of post-delisting monitoring is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as an endangered or threatened species is not again needed. If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, we will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate.

Section 4(g) of the Act explicitly requires that we cooperate with the States in development and implementation of post-delisting monitoring programs. However, we remain ultimately responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting, in this case, the Navy, an integral partner and the sole owner and manager of San Clemente Island.

We will continue to coordinate with the Navy to implement effective post-delisting monitoring (PDM) for the SC Bell's sparrow, SCI lotus, SCI paintbrush, SCI larkspur, and SCI bush-mallow. The PDM plan builds upon current monitoring techniques and research, as well as emerging technology and techniques. Monitoring will assess the species' numbers, distribution, and threats status, as well as ongoing management and conservation efforts that have improved the status of the species since listing. The PDM plan identifies, to the extent practicable and in accordance with our current understanding of the species' life history, measurable thresholds and responses for detecting and reacting to significant changes in the species' populations, distribution, and viability. If declines are detected equaling or exceeding these thresholds, the Service, in combination with the Navy, will investigate causes of these declines, including considerations of habitat changes, anthropogenic impacts, stochastic events, or any other significant evidence. The result of the investigation will be to determine if any of the species warrant expanded monitoring, additional research, additional habitat protection, or resumption of Federal protection under the Act.

Given the Navy's past and current stewardship efforts, management for the species has been effective to date, and it is reasonable to expect that management will continue to be effective for the species and their habitats beyond a post-delisting monitoring period, and well into the future. In addition to post-delisting monitoring activities that will occur, the Navy anticipates continued management of the species in accordance with the SCI INRMP and other management plans. Additional monitoring or research (beyond post-delisting monitoring requirements) may occur in the future for these and other rare endemics on SCI based on available resource levels. We will work closely with the Navy to ensure post-delisting monitoring is conducted and to ensure future management strategies are implemented (as warranted) to benefit these species.

**Required Determinations**

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that we do not need to prepare an environmental assessment or environmental impact statement, as defined in the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. There are no Tribal lands associated with this final rule.

**References Cited**

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Carlsbad Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

**§ 17.11 [Amended]**

■ 2. Amend § 17.11 in paragraph (h) by removing the entry for ''Sparrow, San Clemente sage'' under BIRDS from the List of Endangered and Threatened Wildlife.

**§ 17.12 [Amended]**

■ 3. Amend § 17.12 in paragraph (h) by removing the entries for ''*Acmispon dendroideus* var. *traskiae*'', ''*Castilleja grisea*'', ''*Delphinium variegatum* ssp. *kinkiense*'', and ''*Malacothamnus clementinus*'' under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

**Martha Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2023–01400 Filed 1–24–23; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 222

**[Docket No. 230119–0018]**

**RIN 0648–BL37**

## 2023 Annual Determination To Implement the Sea Turtle Observer Requirement

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

**ACTION:** Final determination.

**SUMMARY:** The National Marine Fisheries Service (NMFS) hereby publishes the final Annual Determination (AD) for 2023, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean in which participants will be required to take fisheries observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle bycatch in a given fishery, evaluate measures to prevent or reduce sea turtle takes, and implement the prohibition against sea turtle takes. Fisheries identified on the 2023 AD (see Table 1) will be required to carry observers upon NMFS' request, and will remain on the AD for a 5-year period until December 31, 2027.

**DATES:** This final determination is effective February 24, 2023.

**ADDRESSES:** Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Sea Turtle Annual Determination, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Ellen Keane, Greater Atlantic Region, 978–282–8476; Dennis Klemm, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 206–526–4740; Irene Kelly, Pacific Islands Region, 808–725–5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Sea Turtle Observer Requirement**

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta;* North Pacific distinct population segment (DPS)), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas;* Central West Pacific and Central South Pacific DPSs) and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (Northwest Atlantic distinct population segment), green (North Atlantic, South Atlantic, Central North Pacific, and East Pacific DPSs), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. Pacific waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Bycatch in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (defined to include harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil penalties and criminal

penalties for anyone who knowingly violates the Act or a regulation issued to implement the ESA. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

For most fisheries, the most effective way for NMFS to learn more about bycatch in order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176; August 3, 2007). These regulations specify that NMFS may observe fisheries, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under these regulations may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry the required observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be required to carry observers, if requested, for a period of five years without further action by NMFS. This will enable NMFS to develop appropriate observer coverage and sampling protocols to investigate sea turtle bycatch, and to evaluate whether existing measures are minimizing or preventing bycatch.

**Sea Turtle Distribution**

NMFS uses information on sea turtle distribution and habitat use to inform the development of the final AD. A summary of this information was included in the proposed AD (87 FR 54948; September 8, 2022) and was considered in developing the final 2023 AD.

**Process for Developing the Annual Determination (AD)**

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provided an opportunity for public comment on the proposed determination (87 FR 54948; September 8, 2022). The determination is informed by the best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; and/or qualitative data from logbooks or fisher reports. Specifically, fisheries are identified on the AD based on the extent to which:

(1) The fishery operates in the same waters and at the same time as when sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

The AA used the most recent version of the annually published Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters and on the high seas. However, in preparing the AD, we do not rely on the three-part MMPA LOF classification scheme. In addition, unlike the LOF, the AD may include recreational fisheries likely to interact with sea turtles based on the best available information.

NMFS consulted with appropriate state and Federal fisheries officials to identify which fisheries, both commercial and recreational, to consider. NMFS carefully considered all recommendations and information available for developing the AD. The AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected sea turtle bycatch. NMFS will not include a fishery on the AD if that fishery does not meet the criteria for inclusion on the AD (50 CFR 222.402(a)).

For many fisheries, NMFS may already be addressing bycatch through another mechanism (*e.g.,* rulemaking to implement modifications to fishing gear and/or practices), may be observing the fishery under a separate statutory authority, or will consider including them in future ADs based on the four previously noted criteria (50 CFR 222.402(a)). The fisheries not included on the 2023 AD may still be observed by NMFS fisheries observers under different authorities (*e.g.,* MMPA, Magnuson-Stevens Fishery Conservation and Management Act (MSA)) than the ESA, if applicable.

NMFS publishes the final determination in the **Federal Register** and individuals permitted for each fishery identified on the AD will receive a written notification. NMFS will also notify state or territory agencies. Once included in the final determination, a fishery will remain eligible for observer coverage for a period of five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines a need for more than five years to obtain sufficient scientific data, NMFS will include the fishery in a subsequent proposed AD, prior to the end of the fifth year.

On the 2018 AD, NMFS identified two fisheries and required them to carry observers, if requested, through December 31, 2022. The 2020 AD identified four additional fisheries and required them to carry observers, if requested, through September 29, 2025. The fisheries included on the current AD are available at *https://www.fisheries.noaa.gov/national/bycatch/sea-turtle-observer-requirement-annual-determination.*

**Comments and Responses**

NMFS received 14 comment letters on the proposed AD (87 FR 54948; September 8, 2022). All commenters were members of the public. All commenters expressed general support of the regulation or fishery observer programs. All substantive comments are addressed below. Comments on issues outside the scope of the AD were noted but are not responded to in this final determination.

*General Comments*

*Comment 1:* Twelve commenters expressed general support for the regulation.

*Response:* NMFS agrees and has included two fisheries on the 2023 AD to allow for increased data collection on sea turtle bycatch to accomplish the purposes of the regulation.

*Recommendations for Fisheries To Include on the 2023 AD*

*Comment 2:* One commenter was supportive of the regulation but recommends NMFS include a fishery in the Pacific Ocean on the 2023 AD. The commenter noted that adding a Pacific fishery will allow NMFS to cover fisheries in the Atlantic, Pacific, and Gulf of Mexico.

*Response:* NMFS acknowledges that there are other fisheries, in addition to those included on the 2023 AD, that have the potential to incidentally take sea turtles. The 2023 AD is not meant to be a comprehensive list of fisheries that have sea turtle bycatch or fisheries that require monitoring, but rather a focused list, based on specific inclusion criteria, one of which is based on available funding (see Purpose of the Sea Turtle Observer Requirement section). NMFS is not including a Pacific fishery on the 2023 AD because none of the fisheries in the Pacific met all of the inclusion criteria.

*Observer Coverage*

*Comment 3:* A commenter was supportive of the regulation but raised concern over what NMFS' standards were for distributing and placing observers among fisheries on the AD. The proposed rule stated ''That no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage.'' The commenter questioned what would make observer coverage inappropriate or excessive.

*Response:* When using the AD authority to observe a fishery, NMFS will work within the current observer programs and follow the observer program's standards and observer placement design requirements. Pursuant to 50 CFR 222.404, NMFS will follow the standards for distributing and placing observers: (1) The requirement to obtain the best available scientific information; (2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery; (3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and (4) The need to minimize costs and avoid duplication, where practicable. For example, Northeast Fisheries Observer Program (NEFOP) coverage is determined by an annual discard analysis and sea day allocation report required by the Standardized Bycatch Reporting Methodology (SBRM) Amendment. Trips are assigned based on effort. As there is no pre-trip notification requirement for these fleets, guidance is provided to the contract holder which estimates coverage based on that year's sea day schedule and prior years effort. There are regulations in the SBRM amendment and the contract that prevents individual vessels from being covered in a biased manner.

*Recreational Fisheries*

*Comment 4:* A commenter stated that the AD does not include information on how an observer program would be implemented for recreational fisheries from public piers. They noted that several fishing piers in the Gulf of Mexico have a high rate of sea turtle bycatch. The Loggerhead Marine Life Center in Florida has a responsible pier initiative program. The commenter stated that this data can provide information on sea turtle bycatch off piers and NMFS can use that information to use the AD for recreational fisheries occurring on piers.

*Response:* NMFS acknowledges that there are other fisheries (commercial and recreational), in addition to those included on the 2023 AD, that have the potential to take sea turtles. The 2023 AD is not meant to be a comprehensive list of fisheries that have sea turtle bycatch or fisheries that require monitoring, but rather a focused list, based on specific inclusion criteria, one of which is based on available funding (see Purpose of the Sea Turtle Observer Requirement section). NMFS is not including shore-based recreational fisheries on the 2023 AD because none of the fisheries met all of the inclusion criteria. NMFS and our partners (including those in the Sea Turtle Stranding and Salvage Network) are trying to learn more about how sea turtles interact with recreational fishing gear—see additional information on our Sea Turtle and Recreational Fishing website here: *https://www.fisheries.noaa.gov/national/marine-life-distress/sea-turtles-and-recreational-fishing.*

**Fisheries Included on the 2023 Annual Determination**

NMFS includes two fisheries in the Atlantic Ocean/Gulf of Mexico on the 2023 AD. The two fisheries, listed in Table 1, are the mid-Atlantic gillnet and Gulf of Mexico menhaden purse seine fisheries. These two fisheries were previously listed on the 2018 AD for a five-year period ending December 31, 2022. NMFS includes these fisheries pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in this fishery, and NMFS intends to monitor this fishery.

NMFS used the 2022 MMPA LOF (87 FR 23122; April 19, 2022) as the comprehensive list of commercial fisheries to evaluate for fisheries to include on the AD. The fishery name, definition, and number of vessels/persons for fisheries listed in the AD are taken from the most recent MMPA LOF. Additionally, the fishery descriptions below include a particular fishery's current classification on the MMPA LOF (*i.e.,* Category I, II, or III); Category I and II fisheries are required to carry observers under the MMPA, if requested by NMFS. As noted previously, NMFS also has authority to observe fisheries in Federal waters under the MSA and collect sea turtle bycatch information. The AD authority will work within the current observer programs, and allow NMFS the flexibility to further consider sea turtle data collection needs when allocating observer resources.

A summary of information about the mid-Atlantic gillnet and Gulf of Mexico menhaden purse seine fisheries was included in the proposed AD (87 FR 54948; September 8, 2022) and was considered in developing the final 2023 AD.

**Implementation of Observer Coverage in a Fishery Listed on the 2023 AD**

As part of the 2023 AD, NMFS has included, to the extent practicable, information on the fisheries and gear types to observe, geographic and seasonal scope of coverage, and any other relevant information. NMFS intends to monitor the fisheries and anticipates that it will have the funds to support observer activities. After publication of the final determination, there will be a 30-day delay in the date of effectiveness for implementing observer coverage, see **DATES.**

The design of any observer program for fisheries identified through the AD process, including how observers will be allocated to individual vessels, will vary among fisheries, fishing sectors, gear types, and geographic regions, and will ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. Pursuant to 50 CFR 222.404, during the program design, NMFS will follow the standards below for distributing and placing observers among fisheries identified in the AD and among vessels in those fisheries:

(1) The requirement to obtain the best available scientific information;

(2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under the AD must comply with observer safety requirements specified in 50 CFR 600.725 and 600.746. Specifically, 50 CFR 600.746(c) requires vessels subject to observer coverage to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed may be prohibited from fishing without observer coverage under 50 CFR 600.746(i). Observer programs designed or carried out in accordance with 50 CFR 222.404 are consistent with existing NOAA observer policies and applicable federal regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), and the Observer Health and Safety regulations (50 CFR part 600).

Additional information on observer programs in commercial fisheries is available on the NMFS National Observer Program's website: *https://www.fisheries.noaa.gov/topic/fishery-observers.*

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2023 ANNUAL DETERMINATION

| Fishery | Years eligible to carry observers |
|---|---|
| Purse Seine Fisheries: | |
| Gulf of Mexico menhaden purse seine | 2023–2027 |
| Gillnet Fisheries: | |
| Mid-Atlantic gillnet | 2023–2027 |

## Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This regulation contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The information collection for the AD is approved under Office of Management and Budget (OMB) control number 0648–0593. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This regulation has been determined to be not significant for the purposes of Executive Order 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS determined that publishing the AD qualifies to be categorically excluded from further National Environmental Policy Act (NEPA) review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual, and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document specific to that action that is required under NEPA.

This regulation would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this regulation would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This regulation would have no adverse impacts on sea turtles, and information collected from observer programs may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles.

This regulation would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: January 19, 2023.

**Samuel D. Rauch, III,**

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

[FR Doc. 2023–01427 Filed 1–24–23; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 88, No. 16
Wednesday, January 25, 2023

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

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

**RIN 3084–AB15**

### Energy Labeling Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing comments on its advance notice of proposed rulemaking (''ANPR'') regarding the Energy Labeling Rule.

**DATES:** For the ANPR published October 25, 2022 (87 FR 64399), the comment deadline is extended from December 27, 2022, to January 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome (202–326–2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On October 17, 2022, the Commission announced that it would seek public comments on whether to make changes to the Energy Labeling Rule (the ''Rule''). The Commission subsequently published the ANPR to seek public comments on potential amendments to the Rule, including repair-related requirements, energy labels for several new consumer product categories, and other possible amendments to improve the Rule's effectiveness, and reduce unnecessary burdens. Interested parties have requested an extension of the public comment period until January 31, 2023, to account for the breadth of questions, the complexity of the issues, and the holidays.

The Commission agrees that allowing additional time for filing comments in response to the ANPR would help facilitate the creation of a more complete record. The Commission has therefore decided to extend the comment period to January 31, 2023. This extension will provide commenters adequate time to address the issues raised in the ANPR.

By direction of the Commission.

**Joel Christie,**

*Acting Secretary.*

[FR Doc. 2023–01429 Filed 1–24–23; 8:45 am]

**BILLING CODE 6750–01–P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 437

### Business Opportunity Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing comments on its advance notice of proposed rulemaking (''ANPR'') concerning its trade regulation rule entitled the ''Business Opportunity Rule''.

**DATES:** For the ANPR published November 25, 2022 (87 FR 72428), the comment deadline is extended from January 24, 2023, to January 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Melissa Dickey (202–326–2662), *mdickey@ftc.gov,* Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On November 17, 2022, the Commission announced that it would seek public comments on whether to make changes to the Business Opportunity Rule (the ''Rule''). The FTC's Regulatory Review and Request for Public Comment was subsequently published in the **Federal Register**, with January 24, 2023, established as the deadline for the submission of comments. *See* 87 FR 72428 (Nov. 25, 2022). With this publication, the Commission sought to solicit comments about the efficiency, costs, benefits, and regulatory impact of the Rule, as part of its ten-year regulatory review plan, as well as to inform its consideration of whether the Rule should be extended to include business opportunities and other money-making opportunity programs not currently covered by the Rule, including business coaching and work-from-home programs, investment coaching programs, and ecommerce opportunities.

Interested parties have subsequently requested an extension of the public comment period to give them additional time to respond to the ANPR's request for comment. The Commission agrees that allowing additional time for filing comments in response to the ANPR would help facilitate the creation of a more complete record. The Commission has therefore decided to extend the comment period for seven days, or to January 31, 2023. A seven-day extension will provide commenters adequate time to address the issues raised in the ANPR.

By direction of the Commission.

**Joel Christie,**

*Acting Secretary.*

[FR Doc. 2023–01433 Filed 1–24–23; 8:45 am]

**BILLING CODE 6750–01–P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 464

### Unfair or Deceptive Fees Trade Regulation Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice; extension of public comment period.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing comments on its advance notice of proposed rulemaking (''ANPR'') regarding whether the Commission should prescribe new trade regulation rules or other regulatory alternatives concerning unfair or deceptive acts or practices concerning fees that are prevalent.

**DATES:** For the ANPR published November 8, 2022 (87 FR 67413), the comment deadline is extended from January 9, 2023, to February 8, 2023.

**FOR FURTHER INFORMATION CONTACT:** Austin King (202–326–3166), Associate General Counsel for Rulemaking, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On October 20, 2022, the Commission announced it would publish an ANPR to seek public comments on the prevalence of fee practices that may be unfair or deceptive acts or practices

under the Federal Trade Commission Act and whether the Commission should prescribe new trade regulation rules or other regulatory alternatives to address them. Interested parties have subsequently requested an extension of the public comment period to give them additional time to respond to the ANPR's request for comment.

The Commission agrees that allowing additional time for filing comments in response to the ANPR would help facilitate the creation of a more complete record. The Commission has therefore decided to extend the comment period for 30 days, to February 8, 2023. A 30-day extension will provide commenters adequate time to address the issues raised in the ANPR.

By direction of the Commission.

**Joel Christie,**

*Acting Secretary.*

[FR Doc. 2023–01471 Filed 1–24–23; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 109

**[Docket No. FDA–2022–D–0278]**

## Action Levels for Lead in Food Intended for Babies and Young Children; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Action Levels for Lead in Food Intended for Babies and Young Children: Draft Guidance for Industry.'' The draft guidance, when finalized, would establish the following action levels for lead in processed food intended for babies and young children: 10 parts per billion (ppb) for fruits, vegetables (excluding single-ingredient root vegetables), mixtures, yogurts, custards/puddings, and single-ingredient meats; 20 ppb for root vegetables (single ingredient); and 20 ppb for dry cereals.

**DATES:** Submit either electronic or written comments on the draft guidance by March 27, 2023 to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2022–D–0278 for ''Action Levels for Lead in Food Intended for Babies and Young Children: Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Food Safety, Division of Plant Products and Beverages, Beverages Branch, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:** Eileen Abt, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1700; or Philip Chao, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

**SUPPLEMENTARY INFORMATION:**

## I. Background

We are announcing the availability of a draft guidance for industry entitled ''Action Levels for Lead in Food Intended for Babies and Young Children: Draft Guidance for Industry.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

This draft guidance, when finalized, would, in accordance with 21 CFR 109.6, establish the following action levels for lead in food labeled for babies and young children: 10 parts per billion (ppb) for fruits, vegetables (excluding single-ingredient root vegetables), mixtures, yogurts, custards/puddings, and single-ingredient meats; 20 ppb for root vegetables (single ingredient); and 20 ppb for dry infant cereals. Consistent with 21 CFR 109.6(d), these action levels would reflect levels of lead at which FDA may regard the food as adulterated within the meaning of section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1)). We intend to consider these action levels, in addition to other factors, when considering whether to bring enforcement action in a particular case. We request comments on these proposed action levels in general, including on whether there may be sufficient data or information that would support lower levels for these categories of foods. For example, we request comment on whether there is data or information that show adverse cognitive impacts in children at very low blood levels that could support a lower interim reference level for lead exposure through foods. We are particularly interested in whether there is data and information that would support a lower action level for fruits, vegetables (excluding single-ingredient root vegetables), mixtures, yogurts, custards/puddings, and single-ingredient meats, given that we estimate that the achievability percentile (*i.e.,* percentage of samples that fall at or below the action level) for this food category would be 90.6 percent if the action level were 5 ppb.

In developing this draft guidance, FDA evaluated data collected for grain-based snacks (*e.g.,* teething biscuits, puffs, rusks, wafers) collected through our Toxic Element Program and FDA surveys (122 samples) and FDA's Total Diet Study (44 samples). Toxic Element Program and FDA survey data showed that the mean lead concentration for these grain-based snacks was 11.1 ppb, with 90th to 95th percentile concentrations of 18.7 to 26.8 ppb. Total Diet Study data had a slightly higher mean lead concentration of 17.6 ppb. We also evaluated baby food consumption data from What We Eat in America, the food consumption portion of the National Health and Nutrition Examination Survey, 2003–2018. These data indicated that consumption of grain-based snacks in this subgroup is relatively low. We request comment about consumption patterns and exposure to lead from this source, as well as any information about the role of these products in the diets of infants and toddlers, to help inform whether an action level for this food category would be appropriate.

## II. Paperwork Reduction Act of 1995

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

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/FoodGuidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 19, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–01384 Filed 1–24–23; 8:45 am]

**BILLING CODE 4164–01–P**

# Notices

Federal Register
Vol. 88, No. 16
Wednesday, January 25, 2023

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

## UNITED STATES AFRICAN DEVELOPMENT FOUNDATION

### Public Quarterly Meeting of the Board of Directors

**AGENCY:** United States African Development Foundation.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

**DATES:** The meeting date is Tuesday, February 28, 9 a.m. to 11:30 a.m.

**ADDRESSES:** The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Geroldine Sicot, (202) 233–8820.

(Authority: Public Law 96–533 (22 U.S.C. 290h))

Dated: January 19, 2023.

**Solomon Chi,**

*Chief Program Officer, U.S. African Development Foundation.*

[FR Doc. 2023–01421 Filed 1–24–23; 8:45 am]

**BILLING CODE 6117–01–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 24, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Approval of Laboratories to Conduct Official Testing.

*OMB Control Number:* 0579–0472.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if necessary to prevent the spread of any livestock or poultry pest or disease. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. [7 U.S.C. 8301 *et seq.*]

Animal and Plant Health Inspection Service (APHIS) regulations require APHIS approval or certification for laboratories conducting tests for disease management as well as live animal interstate movement, import and export.

*Need and Use of the Information:* APHIS approval or certification requires various information collection activities. The regulations facilitate the approval of additional laboratories in emergency situations and serve to simplify regulatory oversight and compliance by providing defined application and inspection procedures using a checklist and approval agreement. The regulations also set requirements for testing procedures and methods, biosecurity measures, the use of quality systems and controls with documented guidelines and verification forms, details regarding training and reporting, recordkeeping, and program standards. In addition, laboratories must conduct testing using APHIS-approved assay methods and reporting, request test exemptions if the minimum number of tests are not performed during two consecutive reporting periods and submit sample copies of diagnostic reports. The approved laboratories must maintain approval status and provide proof of accreditation status and set forth general terms for probation status, suspension or rescission of approval, and appeals. Laboratories may also request removal of their approved status.

If APHIS did not collection this information, it could not ensure a national ability to coordinate actions to prevent foreign animal disease outbreaks in the United States.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 402.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 37,697.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–01452 Filed 1–24–23; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Alpine County Resource Advisory Committee; Meeting

**AGENCY:** Forest Service, (Agriculture), USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Alpine County Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Humboldt-Toiyabe National Forest within Alpine County, California, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/htnf/workingtogether/advisorycommittees.*

**DATES:** The meeting will be held on February 28, 2023, 1 p.m.–4 p.m., Pacific Standard Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** This meeting is open to the public and will be held at the Turtle Rock Park Community Center, located at 17300 State Route 89/4, Markleeville, CA 96120. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

**FOR FURTHER INFORMATION CONTACT:** Matt Zumstein, Designated Federal Officer (DFO), by phone at 775–884–8100 or email at *matthew.zumstein@usda.gov* or Matt Dickinson, RAC Coordinator at 775–884–8154 or email at *Matthew.Dickinson@usda.gov.* Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Review and approve projects proposed for funding under the Title II of the Secure Rural Schools legislation;

2. Allow for public comment; and

3. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Matt Zumstein, DFO, Carson Ranger District, 1536 South Carson Street, Carson City, Nevada, 89701; or by email to *matthew.zumstein@usda.gov.* Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: January 19, 2023.

**Egypt Simon,**

*Acting USDA Committee Management Officer.*

[FR Doc. 2023–01385 Filed 1–24–23; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Boundary Establishment for South Fork Clackamas National Wild and Scenic River, Mt. Hood National Forest and Bureau of Land Management, Oregon State Office, Clackamas County, Oregon

**AGENCY:** Forest Service, Agriculture (USDA) and Bureau of Land Management (USDOI).

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of South Fork Clackamas National Wild and Scenic River to Congress. The South Fork Clackamas Wild and Scenic River boundary description is available for review at the following website: *https://www.fs.usda.gov/main/mthood/landmanagement/planning.*

**ADDRESSES:** The South Fork Clackamas Wild and Scenic River boundary is available for review at the website listed under **SUMMARY**, to view the documents in person, arrangements should be made in advance by contacting the offices listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained by contacting John Matthews, Forest Service Regional Land Surveyor, by telephone at 503–808–2420 or *john.matthews@usda.gov.* Alternatively, contact Michelle Lombardo on the Mt. Hood National Forest at 971–303–2083 or *michelle.lombardo@usda.gov;* or Lauren Pidot at the Bureau of Land Management Oregon State Office, 1220 SW 3rd Ave. Portland, OR 97204; 503–808–6001 or *lpidot@blm.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The South Fork Clackamas Wild and Scenic River boundary description is available for review on the website listed under summary. Or in person by contacting one of the following offices: USDA

Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024, at 800–832–1355; Pacific Northwest Regional Office, 1220 SW 3rd Ave. Portland, OR 97204, at 503–808–2468; Mt Hood National Forest Supervisor's Office, 16400 Champion Way, Sandy, OR 97055; USDOI, Bureau of Land Management National Office, (DOI Library), 1849 C St. NW, Washington, DC 20240, Bureau of Land Management Oregon State Office, 1220 SW 3rd Ave. Portland, OR 97204; 503–808–6001. Please contact the appropriate office prior to arrival.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

The Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) of March 30, 2009, designated South Fork Clackamas, Oregon as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: January 19, 2023.

**Troy Heithecker,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2023–01388 Filed 1–24–23; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket No. 230118–0009]**

**RIN 0691–XC132**

### BE–9: Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE–9). The data collected on the BE–9 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

**SUPPLEMENTARY INFORMATION:** Through this Notice, BEA publishes the reporting requirements for the BE–9 survey form. As noted below, all U.S. persons required to respond to this mandatory survey will be contacted by BEA. U.S. persons must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–9 survey form and instructions are available at *www.bea.gov/ssb.*

#### Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

*Who Must Report:* (a) Reports are required from U.S. offices, agents, or other representatives of foreign airline operators that transport passengers or freight and express to or from the United States, whose total covered revenues or total covered expenses were $5 million or more during the previous year, or are expected to meet or exceed that amount during the current year. See BE–9 survey form for more details.

(b) U.S. persons required to report will be contacted individually by BEA. U.S. persons not contacted by BEA have no reporting responsibilities.

*What To Report:* The survey collects information on foreign airline operators' revenues and expenses in the United States, and count of passengers transported to, or from, the United States.

*How To Report:* Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–9 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-9help@bea.gov.*

*When To Report:* Reports are due to BEA 30 days after the end of each quarter.

#### Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0068. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 6 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0068, via email at *OIRA_Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108)

**Paul W. Farello,**

*Associate Director for International Economics, Bureau of Economic Analysis.*

[FR Doc. 2023–01377 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket No. 230118–0011]**

**RIN 0691–XC135**

### BE–30: Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers (BE–30). The data collected on the BE–30 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov*.

**SUPPLEMENTARY INFORMATION:** Through this Notice, BEA publishes the reporting requirements for the BE–30 survey form. As noted below, all U.S. persons required to respond to this mandatory survey will be contacted by BEA. U.S. persons must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–30 survey form and instructions are available at *www.bea.gov/ssb.*

## Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

*Who Must Report:* (a) Reports are required from U.S. ocean carriers that had total reportable revenues or total reportable expenses that were $500,000 or more during the previous year, or are expected to be $500,000 or more during the current year. See BE–30 survey form for more details.

(b) U.S. persons required to report will be contacted individually by BEA. U.S. persons not contacted by BEA have no reporting responsibilities.

*What To Report:* The survey collects information on U.S. ocean freight carriers' foreign revenues and expenses.

*How To Report:* Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile*. Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–30 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-30help@bea.gov*.

*When To Report:* Reports are due to BEA 30 days after the end of each quarter.

## Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov*; under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, via email at *Christopher.Stein@bea.gov*; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, via email at *OIRA_Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108)

**Paul W. Farello,**

*Associate Director for International Economics, Bureau of Economic Analysis.*

[FR Doc. 2023–01378 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket No. 230118–0015]**

**RIN 0691–XC139**

## BE–185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE–185). The data collected on the BE–185 survey are needed to measure U.S. trade in financial services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

**SUPPLEMENTARY INFORMATION:** Through this Notice, BEA publishes the reporting requirements for the BE–185 survey form. As noted below, all U.S. persons required to respond to this mandatory survey will be contacted by BEA. U.S. persons must submit the completed survey forms within 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801, and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 4908(b)). Survey data on international trade in services

and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–185 survey form and instructions are available at *www.bea.gov/ssb.*

**Reporting**

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

*Who Must Report:* (a) Reports are required from each U.S. person who had combined reportable sales of financial services to foreign persons that exceeded $20 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of financial services from foreign persons that exceeded $15 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–185 survey form for more details.

(b) U.S. persons required to report will be contacted individually by BEA. U.S. persons not contacted by BEA have no reporting responsibilities.

*What To Report:* The survey collects information on transactions in financial services between U.S. financial services providers and foreign persons.

*How To Report:* Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–185 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-185help@bea.gov.*

*When To Report:* Reports are due to BEA 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days.

**Paperwork Reduction Act Notice**

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0065. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 10 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0065, via email at OIRA_*Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108 and 15 U.S.C. 4908(b))

**Paul W. Farello,**

*Associate Director for International Economics, Bureau of Economic Analysis.*

[FR Doc. 2023–01382 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket No. 230118–0014]**

**RIN 0691–XC138**

### BE–125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125). The data collected on the BE–125 survey are needed to measure U.S. trade in services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov*.

**SUPPLEMENTARY INFORMATION:** Through this Notice, BEA publishes the reporting requirements for the BE–125 survey form. As noted below, all U.S. persons required to respond to this mandatory survey will be contacted by BEA. U.S. persons must submit the completed survey forms within 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–125 survey form and instructions are available at *www.bea.gov/ssb.*

**Reporting**

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

*Who Must Report:* (a) Reports are required from each U.S. person who had combined reportable sales of services or intellectual property to foreign persons that exceeded $6 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of services or intellectual property from foreign persons that exceeded $4 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–125 survey form for more details.

(b) U.S. persons required to report will be contacted individually by BEA. U.S. persons not contacted by BEA have no reporting responsibilities.

*What To Report:* The survey collects information on U.S. international trade in selected services and intellectual property.

*How To Report:* Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on

reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–125 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-125help@bea.gov*.

*When To Report:* Reports are due to BEA 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days.

**Paperwork Reduction Act Notice**

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0067. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 21 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov*; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0067, via email at *OIRA_Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108)

**Paul W. Farello,**

*Associate Director for International Economics, Bureau of Economic Analysis.*

[FR Doc. 2023–01376 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket No. 230118–0010]**

**RIN 0691–XC134**

### BE–29: Annual Survey of Foreign Ocean Carriers' Expenses in the United States

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29). The data collected on the BE–29 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

**SUPPLEMENTARY INFORMATION:** Through this Notice, BEA publishes the reporting requirements for the BE–29 survey form. As noted below, all U.S. persons required to respond to this mandatory survey will be contacted by BEA. U.S. persons must submit the completed survey forms within 45 days after the end of each calendar year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–29 survey form and instructions are available at *www.bea.gov/ssb.*

**Reporting**

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

*Who Must Report:* (a) Reports are required from U.S. agents of foreign carriers who handled 40 or more foreign ocean carrier port calls in the reporting period, or had covered expenses of $250,000 or more in the reporting period for all foreign ocean vessels handled by the U.S. Agent. See BE–29 survey form for more details.

(b) U.S. persons required to report will be contacted individually by BEA. U.S. persons not contacted by BEA have no reporting responsibilities.

*What To Report:* The survey collects information on foreign ocean carriers' expenses in the United States.

*How To Report:* Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–29 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-29help@bea.gov.*

*When To Report:* Reports are due to BEA 45 days after the end of each calendar year.

**Paperwork Reduction Act Notice**

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 3 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0012, via email at OIRA_*Submission@omb.eop.gov.*

(Authority: 22 U.S.C. 3101–3108)

**Paul W. Farello,**

*Associate Director for International Economics, Bureau of Economic Analysis.*

[FR Doc. 2023–01380 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket No. 230118–0012]**

**RIN 0691–XC136**

### BE–37: Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37). The data collected on the BE–37 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov*.

**SUPPLEMENTARY INFORMATION:** Through this Notice, BEA publishes the reporting requirements for the BE–37 survey form. As noted below, all U.S. persons required to respond to this mandatory survey will be contacted by BEA. U.S. persons must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–37 survey form and instructions are available at *www.bea.gov/ssb.*

## Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

*Who Must Report:* (a) Reports are required from U.S. airline operators engaged in the international transportation of passengers, or of U.S. export freight, or the transportation of freight or passengers between two foreign ports, if total covered revenues or total covered expenses were $500,000 or more in the previous year, or are expected to be $500,000 or more during the current year. See BE–37 survey form for more details.

(b) U.S. persons required to report will be contacted individually by BEA. U.S. persons not contacted by BEA have no reporting responsibilities.

*What To Report:* The survey collects information on U.S. airline operators' foreign revenues and expenses, and count of passengers transported to, or from, the United States.

*How To Report:* Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–37 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-37help@bea.gov.*

*When To Report:* Reports are due to BEA 30 days after the end of each quarter.

## Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 5 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, via email at OIRA_*Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108)

**Paul W. Farello,**

*Associate Director for International Economics, Bureau of Economic Analysis.*

[FR Doc. 2023–01379 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket No. 230118–0013]**

**RIN 0691–XC137**

## BE–45: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45). The data collected on the BE–45 survey are needed to measure U.S. trade in insurance services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov*.

**SUPPLEMENTARY INFORMATION:** Through this Notice, BEA publishes the reporting requirements for the BE–45 survey form. As noted below, all U.S. persons required to respond to this mandatory survey will be contacted by BEA. U.S. persons must submit the completed survey forms within 30 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–45 survey form and instructions are available at *www.bea.gov/ssb.*

**Reporting**

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

*Who Must Report:* (a) Reports are required from U.S. persons whose combined reportable insurance transactions with foreign persons exceeded $8 million (based on absolute value) during the previous calendar year, or are expected to exceed that amount during the current calendar year. See BE–45 survey form for more details.

(b) U.S. persons required to report will be contacted individually by BEA. U.S. persons not contacted by BEA have no reporting responsibilities.

*What To Report:* The survey collects information on cross-border insurance transactions between U.S. insurance companies and foreign persons.

*How To Report:* Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–45 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-45help@bea.gov.*

*When To Report:* Reports are due to BEA 30 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 45 days.

**Paperwork Reduction Act Notice**

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0066. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 9 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0066, via email at *OIRA_Submission@omb.eop.gov*.

(Authority: 22 U.S.C. 3101–3108)

**Paul W. Farello,**

*Associate Director for International Economics, Bureau of Economic Analysis.*

[FR Doc. 2023–01381 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–7–2023]**

### Foreign-Trade Zone (FTZ) 129—Bellingham, Washington, Notification of Proposed Production Activity Corvus Energy USA, Ltd. (Lithium-Ion Battery Energy Storage Systems), Bellingham, Washington

Corvus Energy USA, Ltd. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Bellingham, Washington, within Subzone 129C. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on January 12, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished product is lithium-ion battery energy storage systems used for marine applications (duty rate, 3.4%).

The proposed foreign-status materials and components include: polyester adhesive backed label; sheeting (plank foam); polyethylene bag; polyester burst disc cover; clip (polycarbonate); pin drive rivet (polycarbonate); steel screw; thread forming screw (steel, zinc plating); steel nut with zinc plating; iron or steel flat washer; zinc tape; lithium-ion battery cell (3.7 volts); air cooled heat sink (aluminum) for lithium-ion battery modules; aluminum casting plate, battery module enclosure; plastic carrier connector and tabs for lithium-ion battery modules and or cells; end cell of plastic carrier assembly for lithium-ion battery modules and or cells; cover assembly battery module enclosure (steel); bus bar (copper); printed circuit board assembly; plastic housing connector; wire harness; graphite heat transfer sheet; plexiglas status light; printed circuit board assembly with temperature sensors; and, printed circuit board assembly for optical communication between batteries and master control (duty rate ranges from duty-free to 8.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301) and section 232 of the Trade Expansion Act of 1962 (Section 232), depending on the country of origin. The applicable section 301 and section 232 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 6, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: January 20, 2023.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2023–01475 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 19–2A001]**

### Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application for an amended export trade certificate of review for National Pecan Shellers Association, application no. 19–2A001.

**SUMMARY:** The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, has received an application for an amended Export Trade Certificate of Review (Certificate). This notice summarizes the proposed application and seeks public comments on whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011–21) (the Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to *ETCA@trade.gov*. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should also be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 19–2A001.''

A summary of the application follows.

**Summary of the Application**

*Applicant:* National Pecan Shellers Association, 3200 Windy Hill Rd. SE, Suite 600W, Atlanta, GA, 30339.

*Contact:* Hannah Perkins, Associate Account Executive of The Kellen Company.

*Application No.:* 19–2A001.

*Date Deemed Submitted:* January 12, 2023.

*Summary:* National Pecan Shellers Association seeks to amend its Certificate as follows:

1. Add the following entities as new exporting Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

- HNH Nut Company, Visalia, CA
- Humphrey Pecan LLC, San Antonio, TX
- John B. Sanfilippo & Son, Inc., Elgin, IL
- Pecan Star & Nut Corp, San Antonio, TX
- Southern Roots Nut Company, LLC, Las Cruces, NM

2. Drop the following entities as Members:

- Green Valley Company, Sahuarita, Arizona
- Chase Farms, LLC, Artesia, New Mexico

*NPSA's proposed amendment of its Export Trade Certificate of Review would result in the following membership list:*

*Exporting Members*

- Arnco, Inc. dba Carter Pecan, Panama City Beach, Florida
- Chase Pecan, LP, San Saba, Texas
- Diamond Foods, LLC, Stockton, California
- Easterlin Pecan Co, Montezuma, Georgia
- HNH Nut Company, Visalia, CA
- Hudson Pecan Co., Inc., Ocilla, Georgia
- Humphrey Pecan LLC, San Antonio, TX
- John B. Sanfilippo & Son, Inc., Elgin, IL
- La Nogalera USA Inc., El Paso, Texas
- Lamar Pecan Company, Hawkinsville, Georgia
- Navarro Pecan Company, Corsicana, Texas
- Pecan Grove Farms, Dallas, Texas
- Pecan Star & Nut Corp, San Antonio, TX
- Southern Roots Nut Company, LLC, Las Cruces, NM
- South Georgia Pecan Company, Valdosta, Georgia

*Non-Exporting Members*

- Pecan Export Trade Council, Atlanta, Georgia
- The Kellen Company, Atlanta, Georgia (Independent Third Party)

Dated: January 20, 2023.

**Joseph Flynn,**

*Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.*

[FR Doc. 2023–01480 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–148, A–552–008]**

### Gas Powered Pressure Washers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

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

**DATES:** Applicable January 19, 2023.

**FOR FURTHER INFORMATION CONTACT:** Dusten Hom (the People's Republic of China (China)) or Matthew Palmer (the Socialist Republic of Vietnam (Vietnam), AD/CVD Operations, Offices I and III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–1678, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petitions**

On December 30, 2022,[1] the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of gas powered pressure washers (pressure washers) from China and Vietnam, filed in proper form on behalf of FNA Group, Inc. (the petitioner), a domestic producer of pressure washers.[2] These AD petitions were accompanied by a countervailing duty (CVD) petition concerning imports of pressure washers from China.[3]

On January 4 and 11, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[4] The petitioner filed

[1] *See* Memorandum, ''Decision Memorandum Concerning the Filing Date of the Petitions,'' dated December 30, 2022.

[2] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam,'' dated December 30, 2022 (Petitions).

[3] *Id.*

[4] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Supplemental Questions,'' dated January 4, 2023 (General Issues Supplemental Questionnaire); ''Petition for the Imposition of Antidumping Duties on Imports of Gas Powered Pressure Washers from the People's Republic of China: Supplemental Questions,'' dated January 4, 2023; and ''Petition for the Imposition of Antidumping Duties on Imports of Gas Powered Pressure Washers from Vietnam: Supplemental Questions,'' dated January 4, 2023; *see also*

Continued

timely responses to the supplemental questionnaires on January 9, 10, and 12, 2023.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of pressure washers from China and Vietnam are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the pressure washer industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigations.[6]

**Periods of Investigation**

Because the Petitions were filed on December 30, 2022, and China and Vietnam are non-market economy (NME) countries, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the China and Vietnam AD investigations is April 1, 2022, through September 30, 2022.

**Scope of the Investigations**

The products covered by these investigations are pressure washers from China and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

**Comments on the Scope of the Investigations**

On January 4, 2023, Commerce requested information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On January 10, 2023, the petitioner revised the scope language.[8] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on February 8, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 21, 2023, which is ten calendar days from the initial comment deadline.[11]

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

**Filing Requirements**

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An electronically filed document must be received successfully in its entirety by the time and date it is due.

**Comments on Product Characteristics**

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of pressure washers to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on February 8, 2023, which is 20 calendar days from the signature date of this notice.[13] Any rebuttal comments must be filed by 5:00 p.m. ET on February 21, 2023.[14] All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

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Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated January 11, 2023 (General Issues Memorandum).

[5] *See* Petitioner's Letters, '' Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Supplemental Questionnaire Response—China,'' dated January 9, 2023; ''Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Supplemental Questionnaire Response—Vietnam,'' dated January 9, 2023; ''Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Supplemental Questionnaire Response—General Issues,'' dated January 10, 2023 (First General Issues Supplement); and ''Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: 2nd Supplemental Questionnaire Response—General Issues,'' dated January 12, 2023 (Second General Issues Supplement).

[6] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[7] *See* General Issues Supplemental Questionnaire.

[8] *See* First General Issues Supplement at 1–5 and Exhibit Supp I–3.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] The deadline for scope rebuttal comments falls on Saturday, February 18, 2023, and the following Monday is February 20, 2023, which is a Federal holiday. Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, Tuesday, February 21, 2023). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005) (*Notice of Clarification*).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) (for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf*).

[13] *See* 19 CFR 351.303(b)(1).

[14] The deadline for product characteristics rebuttal comments falls on Saturday, February 18, 2023, and the following Monday is February 20, 2023, which is a Federal holiday. Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, Tuesday, February 21, 2023). *See Notice of Clarification.*

**Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[15] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[16]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[17] Based on our analysis of the information submitted on the record, we have determined that pressure washers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[18]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production in 2021 and compared this to the estimated 2021 production of the domestic like product for the entire U.S. pressure washers industry.[19] The petitioner estimated total production for the industry by multiplying the estimated U.S. shipments for the entire domestic industry by the ratio of the petitioner's production to U.S. shipments.[20] We relied on data provided by the petitioner for purposes of measuring industry support.[21]

Our review of the data provided in the Petitions, the First General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[22] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[23] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[24] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[25] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[26]

**Allegations and Evidence of Material Injury and Causation**

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[27]

The petitioner contends that the industry's injured condition is illustrated by a significant volume of subject imports; declining market share; underselling and price depression and/or suppression; decline in the domestic

[15] *See* section 771(10) of the Act.

[16] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[17] *See* Petitions at Volume I (pages I–7 through I–12, I–19, and Exhibits I–14 and I–16); *see also* First General Issues Supplement at 9–16 and Exhibits Supp I–8 through Supp I–11.

[18] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Checklist, ''Gas Powered Pressure Washers from the People's Republic of China,'' dated concurrently with this notice (China AD Checklist); and Checklist, ''Gas Powered Pressure Washers from the Socialist Republic of Vietnam,'' dated concurrently with this notice (Vietnam AD Checklist) (collectively, Country-Specific AD Initiation Checklists), at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam).

[19] *See* Petitions at Volume I (pages I–3 through I–4 and Exhibit I–2); *see also* First General Issues Supplement at 5–9 and Exhibits Supp I–4 through I–Supp I–7; and Second General Issues Supplement at 1–2 and Exhibit S2 I–1.

[20] *See* Petitions at Volume I (pages I–3 through I–4 and Exhibit I–2); *see also* First General Issues Supplement at 5–9 and Exhibit Supp I–5; and Second General Issues Supplement at 1–2 and Exhibit S2 I–1.

[21] *See* Petitions at Volume I (pages I–3 through I–4 and Exhibits I–1 and I–2); *see also* First General Issues Supplement at 5–9 and Exhibit Supp I–5; and Second General Issues Supplement at 1–2 and Exhibit S2 I–1. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[22] *See* Petitions at Volume I (pages I–3 through I–4 and Exhibits I–1 through I–2); *see also* First General Issues Supplement at 5–9 and Exhibits Supp I–4 through Supp I–7; and Second General Issues Supplement at 1–2 and Exhibit S2 I–1. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[23] *See* Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[24] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[25] *Id.*

[26] *Id.*

[27] *See* Petitions at Volume I (pages I–19 through I–20 and Exhibit I–8); *see also* Second General Issues Supplement at 2 and Exhibit S2 I–2.

industry's production, capacity utilization, U.S. shipments, and employment variables; declining operating income; and lost sales and revenues.[28] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[29]

**Allegations of Sales at LTFV**

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of pressure washers from China and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

**U.S. Price**

For China and Vietnam, the petitioner based export price (EP) on pricing information for sales of, or offers for sale of, pressure washers produced in and exported from each country. The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.[30]

**Normal Value**

Commerce considers China and Vietnam to be NME countries.[31] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China and Vietnam as NME countries for purposes of the initiation of these investigations. Accordingly, NV in China and Vietnam is appropriately based on FOPs valued in surrogate market economy countries, in accordance with section 773(c) of the Act.

The petitioner claims that Turkey is an appropriate surrogate country for China because Turkey is a market economy (ME) country that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.[32] The petitioner provided publicly available information from Turkey to value all FOPs.[33] Based on the information provided by the petitioner, we determine that it is appropriate to use Turkey as a surrogate country for initiation purposes.

The petitioner claims that Indonesia is an appropriate surrogate country for Vietnam because Indonesia is a ME country that is at a level of economic development comparable to that of Vietnam and is a significant producer of comparable merchandise.[34] The petitioner provided publicly available information from Indonesia to value all FOPs.[35] Based on the information provided by the petitioner, we determine that it is appropriate to use Indonesia as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determinations.

**Factors of Production**

Because information regarding the volume of inputs consumed by Chinese and Vietnamese producers/exporters was not reasonably available, the petitioner used its own product-specific consumption rates as a surrogate to value the FOPs of Chinese and Vietnamese manufacturers.[36] Additionally, the petitioner calculated factory overhead; selling, general and administrative expenses; and profit based on the experience of a Turkish and Indonesian producer of comparable merchandise for China and Vietnam, respectively.[37]

**Fair Value Comparisons**

Based on the data provided by the petitioner, there is reason to believe that imports of pressure washers from China and Vietnam are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for pressure washers for each of the countries covered by this initiation are as follows: (1) China—136.70 and 242.34 percent; and (2) Vietnam—110.23 and 225.65 percent.[38]

**Initiation of LTFV Investigations**

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of pressure washers from China and Vietnam are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

**Respondent Selection**

In the Petitions, the petitioner named 27 companies in China and 14 companies in Vietnam as producers and/or exporters of pressure washers.[39] In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 27 Chinese and 14 Vietnamese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

[28] *See* Petitions at Volume I (pages I–14 and I–16 through I–37 and Exhibits I–6 through I–8, I–10 through I–13, and I–15); *see also* First General Issues Supplement at 16 through 19 and Exhibit Supp I–12; and Second General Issues Supplement at 2 and Exhibit S2 I–2.

[29] *See* Country-Specific AD Initiation Checklists at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam).

[30] *See* Country-Specific AD Initiation Checklists.

[31] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying China NME Status Decision Memorandum, unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018); *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016–2017,* 84 FR 18007 (April 29, 2019).

[32] *See* China AD Checklist.

[33] *Id.*

[34] *See* Vietnam AD Checklist.

[35] *Id.*

[36] *See* Country-Specific AD Checklists.

[37] *Id.*

[38] *Id.* for details of the calculations.

[39] *See* Petitions at Volume I (page 13 and Exhibits I–6 and I–7); *see also* First General Issues Supplement at 1 and Exhibit Supp I–1.

In addition, Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at *https://enforcement.trade.gov/questionnaires/questionnaires-ad.html.* Producers/exporters of pressure washers from China and Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese and Vietnamese producers/exporters no later than 5:00 p.m. ET on February 2, 2023, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://enforcement.trade.gov/apo.* Commerce intends to make its decisions regarding respondent selection within 20 days of publication of this notice.

**Separate Rates**

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application.[40] The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate rate application will be due 30 days after publication of this initiation notice.[41] Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China and Vietnam submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

**Use of Combination Rates**

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[42]

**Distribution of Copies of the AD Petitions**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of China and Vietnam via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of pressure washers from China and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[43] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[44] Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[45] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[46] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.[47] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered

[40] *See* Enforcement and Compliance's Policy Bulletin 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available at *https://enforcement.trade.gov/policy/bull05-1.pdf.*

[41] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[42] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[43] *See* section 733(a) of the Act.

[44] *Id.*

[45] *See* 19 CFR 351.301(b).

[46] *See* 19 CFR 351.301(b)(2).

[47] *See* 19 CFR 351.302.

untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[48]

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[49] Parties must use the certification formats provided in 19 CFR 351.303(g).[50] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[51]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: January 19, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigations**

The merchandise covered by these investigations is cold water gas powered pressure washers (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.,* the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the ''power unit.'' The scope of these investigations covers cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the ''power unit,'' including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of these investigations covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of these investigations, an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water gas powered pressure washer is within the scope of these investigations regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure washers that include a heating element used to heat the water sprayed from the machine.

Also specifically excluded from the scope of these investigations is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and Up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99 cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The cold water gas powered pressure washers subject to these investigations are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2023–01477 Filed 1–24–23; 8:45 am]

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[48] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[49] *See* section 782(b) of the Act.

[50] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[51] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–149]**

### Gas Powered Pressure Washers From the People's Republic of China: Initiation of Countervailing Duty Investigation

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

**DATES:** Applicable January 19, 2023

**FOR FURTHER INFORMATION CONTACT:** Brontee George, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4656.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On December 30, 2022, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of gas powered pressure washers (pressure washers) from the People's Republic of China (China) filed in proper form on behalf of FNA Group, Inc. (the petitioner), a domestic producer of pressure washers.[1] The CVD petition was accompanied by antidumping duty (AD) petitions concerning imports of pressure washers from China, and the Socialist Republic of Vietnam.[2]

On January 4, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petition.[3] On January 10, 2023, the

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam,'' dated December 30, 2022 (Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Supplemental Questions,'' dated January 4, 2023; and ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Gas Powered Pressure Washers from the People's Republic of

petitioner filed timely responses to these requests for additional information.[4] On January 11, 2023, Commerce held a teleconference with the petitioner to address the General Issues Supplement and additionally issue a second supplemental questionnaire.[5] On January 12, 2023, the petitioner filed a timely response to the supplemental questionnaire.[6]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of pressure washers in China and that such imports are materially injuring, or threatening material injury to, the domestic industry producing in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is supported by information reasonably available to the petitioner.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[7]

## Period of Investigation

Because the Petition was filed on December 30, 2022, the period of investigation (POI) is January 1, 2021, through December 31, 2021.[8]

## Scope of the Investigation

The product covered by this investigation is pressure washers from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

## Comments on the Scope of the Investigation

On January 4, 2023, Commerce requested information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[9] On January 10, 2023, the petitioner revised the scope language.[10] The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[11] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[12] To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on February 8, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 21, 2023, which is ten calendar days from the initial comment deadline.[13]

Commerce requests that any factual information that the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All scope comments must also be filed on the record of the concurrent AD investigations.

## Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[14] An electronically filed document must be received successfully in its entirety by the time and date it is due.

## Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it an opportunity for consultations with respect to the Petition.[15] However, the GOC did not request consultations.

## Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support

China, and the Socialist Republic of Vietnam: Supplemental Questions,'' dated January 4, 2023 (General Issues Supplemental Questionnaire); *see also* Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated January 11, 2023 (General Issues Memorandum).

[4] *See* Petitioner's Letters, ''Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Supplemental Questionnaire Response—General Issues,'' dated January 10, 2023 (First General Issues Supplement); and Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Supplemental Questionnaire Response—China CVD,'' dated January 10, 2023.

[5] *See* Commerce's Memo, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Phone Call with Counsel to the Petitioner,'' dated January 11, 2023.

[6] *See* Petitioner's Letters, ''Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: 2nd Supplemental Questionnaire Response—General Issues,'' dated January 12, 2023 (Second General Issues Supplement).

[7] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[8] *See* 19 CFR 351.204(b)(2).

[9] *See* General Issues Supplemental Questionnaire.

[10] *See* First General Issues Supplement at 1–5 and Exhibit Supp I–3.

[11] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[12] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[13] The deadline for scope rebuttal comments falls on Saturday, February 18, 2023, and the following Monday is February 20, 2023, which is a Federal holiday. Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, Tuesday, February 21, 2023). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005) (*Notice of Clarification*).

[14] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[15] *See* Commerce's Letter, ''Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 12, 2023.

using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[16] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[17]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[18] Based on our analysis of the information submitted on the record, we have determined that pressure washers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production in 2021 and compared this to the estimated total 2021 production of the domestic like product for the entire U.S. pressure washers industry.[20] The petitioner estimated total production for the industry by multiplying the estimated U.S. shipments for the entire domestic industry by the ratio of the petitioner's production to U.S. shipments.[21] We relied on data provided by the petitioner for purposes of measuring industry support.[22]

Our review of the data provided in the Petition, the First General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[23] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[24] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[25] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[26] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[27]

**Injury Test**

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

**Allegations and Evidence of Material Injury and Causation**

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[28]

The petitioner contends that the industry's injured condition is illustrated by a significant volume of subject imports; declining market share; underselling and price depression and/or suppression; decline in the domestic industry's production, capacity utilization, U.S. shipments, and employment variables; declining operating income; and lost sales and revenues.[29] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[30]

[16] *See* section 771(10) of the Act.

[17] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[18] *See* Petition at Volume I (pages I–7 through I–12, I–19, and Exhibits I–14 and I–16*); see also* First General Issues Supplement at 9–16 and Exhibits Supp I–8 through Supp I–11.

[19] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Gas Powered Pressure Washers from the People's Republic of China (China CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

[20] *See* Petition at Volume I (pages I–3 through I–4 and Exhibit I–2); *see also* First General Issues Supplement at 5–9 and Exhibits Supp I–4 through Supp I–7; and Second General Issues Supplement at 1 and 2 and Exhibit S2 I–1.

[21] *See* Petition at Volume I (pages I–3 through I–4 and Exhibit I–2); *see also* First General Issues Supplement at 5–9 and Exhibits Supp I–4 through Supp I–7; and Second General Issues Supplement at 1 and 2 and Exhibit S2 I–1.

[22] *See* Petition at Volume I (pages I–3 through I–4 and Exhibits I–1 and I–2); *see also* First General Issues Supplement at 5–9 and Exhibit Supp I–5; and Second General Issues Supplement at 2 and Exhibit S2 I–2. For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

[23] *See* Petition at Volume I (pages I–3 through I–4 and Exhibits I–1 through I–2); *see also* General Issues Supplement at 5–9 and Exhibits Supp I–4 through Supp I–7; and Second General Issues Supplement at 2 and Exhibit S2 I–2. For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

[24] *See* Attachment II of China CVD Initiation Checklist; *see also* section 702(c)(4)(D) of the Act.

[25] *See* Attachment II of the China CVD Initiation Checklist.

[26] *Id.*

[27] *Id.*

[28] *See* Petition at Volume I (pages I–19 through I–20 and Exhibit I–8).

[29] *See* Petition at Volume I (pages I–14, I–16 through I–37 and Exhibits I–6 through I–8, I–10 through I–13, and I–15); *see also* First General Issues Supplement at 16 through 19 and Exhibit Supp I–12.

[30] *See* China CVD Initiation Checklist at Attachment III, Analysis of Allegations and

**Initiation of CVD Investigation**

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of pressure washers from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 15 of the 17 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

**Respondent Selection**

The petitioner named 27 companies in China as producers and/or exporters of pressure washers.[31] Commerce normally selects respondents in a CVD investigation using U.S. Customs and Border Protection (CBP) entry data. However, for this investigation, the Harmonized Tariff Schedule of the United States (HTSUS) numbers for the subject merchandise would enter under are basket categories containing many products unrelated to pressure washers, and the HTSUS numbers allow for the reporting of differing units of quantity. Therefore, we cannot rely on CBP entry data in selecting respondents. Instead, for this investigation, Commerce will request quantity and value (Q&V) information from known exporters and producers identified, with complete contact information, in the Petition. In addition, Commerce will post the Q&V questionnaire along with filing instructions on the Enforcement & Compliance website at *http://www.trade.gov/enforcement/news.asp.*

Producers/exporters of pressure washers from China who do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance website. All Q&V responses must be filed electronically via ACCESS. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on the responses to the Q&V questionnaire that it receives.

**Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the CVD Petition to each exporter named in the CVD Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of pressure washers from China are materially injuring, or threatening material injury to, a U.S. industry.[32] A negative ITC determination will result in the investigation being terminated.[33] Otherwise, this CVD investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [34] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[35] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[36] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.[37]

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[38] Parties must use the certification formats provided in 19 CFR 351.303(g).[39] Commerce intends to reject factual submissions if the submitting party does not comply with

Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam (Attachment III).

[31] *See* Petition at Volume I (Exhibit I–9).

[32] *See* section 703(a)(1) of the Act.

[33] *Id.*

[34] *See* 19 CFR 351.301(b).

[35] *See* 19 CFR 351.301(b)(2).

[36] *See* 19 CFR 351.302.

[37] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[38] *See* section 782(b) of the Act.

[39] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

the applicable certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[40]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: January 19, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The merchandise covered by this investigation is gas powered pressure washers (also commonly known as pressure washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.,* the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the ''power unit.'' The scope of the investigation covers cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the ''power unit,'' including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of the investigation covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this investigation, an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A gas powered pressure washer is within the scope of this investigation regardless of the origin of its engine. Subject merchandise also includes finished and unfinished gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure washers that include a heating element used to heat the water sprayed from the machine.

Also specifically excluded from the scope of this investigation is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and Up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99 cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The cold water gas powered pressure washers subject to this investigation are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

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[40] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### National Advanced Spectrum and Communications Test Network: Citizens Broadband Radio Service Sharing Ecosystem Assessment Test Plan Community Outreach

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The National Advanced Spectrum and Communications Test Network (NASCTN) is hosting a public meeting on NASCTN's test plan for collecting emissions in the Citizen Broadband Radio Service (CBRS) band in 'Always On' Dynamic Protection Areas (DPAs), on February 22, 2023, from 10:00 a.m.–12:00 p.m. Mountain Standard Time. The purpose of this meeting is to brief federal, industry, and academic stakeholders and interested parties from the public on the details and approach to collecting emissions in the CBRS band for one of the three main tasks of the NASCTN CBRS Sharing Ecosystem Assessment (SEA) project.

**DATES:** The NASCTN meeting on the CBRS SEA Project Aggregate Emissions in Always-On DPA test plan will take place February 22, 2023 from 10:00 a.m.–12:00 p.m. Mountain Standard Time.

**ADDRESSES:** The meeting will be held both in-person at the NIST campus at 325 Broadway Street, Boulder, CO 80305 and via web conference. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Keith Hartley at *keith.hartley@nist.gov* or 719.572.8256.

**SUPPLEMENTARY INFORMATION:** The NASCTN CBRS SEA project seeks to provide data-driven insight into the CBRS sharing ecosystem's effectiveness between CBRS and DoD systems, and to track changes in the spectrum environment over time via three primary tasks: (1) Measure Aggregate Emissions in the CBRS Band in Coastal DPAs, (2) Measure Aggregate Emissions in Always-On DPA, and (3) Evaluate Environmental Sensing Capacity (ESC) performance in the Field.

NASCTN is hosting a public meeting on the CBRS SEA project's Measure Aggregate Emissions in Always-On DPA test plan on February 22, 2023 from 10:00 a.m.–12:00 p.m. Mountain Standard Time. The purpose of this meeting is to brief federal, industry, and academic stakeholders and interested parties from the public on the details and approach to collecting emissions in the CBRS band for task 2 of the three main tasks of the NASCTN CBRS SEA project.

Approximately 30 minutes will be allocated for public comments and questions with speaking times assigned on a first-come, first-served basis. Public comments can be provided via in-person attendance, web conference attendance, or via email. The amount of time per speaker will be determined by the number of requests received. Speakers who wish to expand upon their questions or statements, those who wish to speak but cannot be accommodated during the meeting, and those who are unable to attend are invited to submit written statements by email to *keith.hartley@nist.gov.* Please note that all submitted comments will be treated as public documents.

Anyone wishing to attend this meeting in-person or via web conference must register by 5:00 p.m. Mountain Standard Time, February 15, 2023. Please submit your full name, email address, and phone number to Keith Hartley at *keith.hartley@nist.gov.*

*Authority:* 15 U.S.C. 278t.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–01446 Filed 1–24–23; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC371]**

### Endangered and Threatened Species; Draft Recovery Plan for the Oceanic Whitetip Shark (Carcharhinus Longimanus)

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

**ACTION:** Notice of availability of draft recovery plan; request for comments.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), announce the availability of a Draft Endangered Species Act (ESA) Recovery Plan for the threatened oceanic whitetip shark (*Carcharhinus longimanus*) for public review. We are soliciting review and comment from the public and all interested parties on the Draft Recovery Plan, and will consider all substantive comments received during the review period before submitting the Recovery Plan for final approval.

**DATES:** Comments on the Draft Recovery Plan must be received by March 27, 2023.

**ADDRESSES:** You may submit comments on the Draft Recovery Plan, identified by NOAA–NMFS–2022–0097 by the following method.

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0097 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

Electronic copies of the Draft Recovery Plan and supporting documents are available online at: *https://www.fisheries.noaa.gov/species/oceanic-whitetip-shark#conservation-management.*

**FOR FURTHER INFORMATION CONTACT:** Kristen Koyama, (301) 427–8456, *kristen.koyama@noaa.gov* or Chelsey Young, (808) 725–5154, *chelsey.young@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under our jurisdiction, unless it is determined that such plans would not promote the conservation of the species. Section 4(f)(1) of the ESA requires that recovery plans incorporate, to the maximum extent practicable: (1) site-specific management actions necessary to achieve the plan's goals; (2) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; and (3) estimates of the time required and costs to implement recovery actions.

We listed the oceanic whitetip shark (*Carcharhinus longimanus*) as a threatened species under the ESA on January 30, 2018 (83 FR 4153).

The oceanic whitetip shark is a globally distributed, pelagic species of shark that is highly migratory, has low-moderate productivity, and relatively low reproductive rates. While the current population size is unknown, the best available information indicates the oceanic whitetip shark has experienced significant declines in abundance throughout its range over at least the last several decades due to overutilization in commercial fisheries resulting in high levels of fishing mortality. It is difficult to assess the global population status of the oceanic whitetip shark because stock assessments to date have only been conducted for the Western and Central Pacific stock. Therefore, it is unknown whether global population abundance has continued to decline, has stabilized, or has recently increased. Regardless of recent trends, the oceanic whitetip shark's large population decline is a cause for concern due to ongoing susceptibility to threats acting on the species.

#### Development of the Draft Recovery Plan

In September 2018, we developed a recovery outline to systematically and cohesively guide recovery for the oceanic whitetip shark until we completed a recovery plan. The recovery outline is available on our website at: *https://www.fisheries.noaa.gov/species/oceanic-whitetip-shark#conservation-management.*

In April and November of 2019, we held two 3-day recovery planning workshops for the oceanic whitetip shark in Honolulu, Hawaii and Miami, Florida, respectively. The purpose of these workshops was to gather expert input and perspectives on the best ways for recovering the oceanic whitetip shark, including identifying potential recovery criteria and actions to address the threats to the species. We invited experts in specific topic areas, including the species' biology/ecology, threats to the species, fisheries management, and the recovery planning process itself. Identified experts included representatives of Federal agencies, scientific experts, individuals from conservation partners and non-governmental organizations, and representatives from the commercial fishing industry. The workshop summaries were published in late 2019 and are available from our website at: *https://www.fisheries.noaa.gov/species/oceanic-whitetip-shark#conservation-management.*

The recovery planning components for the oceanic whitetip shark are divided into three separate documents. The first document, the Recovery Status Review, provides detailed information on the oceanic whitetip shark's biology, ecology, status and threats, and conservation efforts to date, which has typically been included in the background section of a species' recovery plan. This separate document is designed to inform all post-listing activities, including recovery planning, and is a comprehensive update to the original 2017 status review (Young *et al.* 2017). The Recovery Status Review may be revised as new information becomes available. The second document, the Draft Recovery Plan, focuses on the statutory components of a recovery plan, as required under the ESA to be incorporated to the maximum extent practicable: (1) a description of site-specific management actions necessary for the conservation and survival of the species (recovery actions); (2) objective, measurable criteria that, when met, will allow the species to be removed from the endangered and threatened species list; and (3) estimates of the time and cost required to achieve the plan's goals.

Site-specific recovery actions in the Draft Recovery Plan are described at a relatively high level and are strategic in nature. The third document, the Draft Recovery Implementation Strategy, is a flexible, operational document separate from the Draft Recovery Plan that provides specific, prioritized activities necessary to fully implement recovery actions in the Draft Recovery Plan, while affording us the ability to modify these activities efficiently to reflect changes in the information available as well as progress towards recovery. All three of the recovery planning documents, including the Recovery Status Review, the Draft Recovery Plan, and the Draft Recovery Implementation Strategy, are available on the NMFS oceanic whitetip shark profile website at: *https://www.fisheries.noaa.gov/species/oceanic-whitetip-shark#conservation-management.*

We have determined that this Draft Recovery Plan for the oceanic whitetip shark meets the statutory requirements for a recovery plan and are proposing to adopt it as the ESA recovery plan for this threatened species. Section 4(f)(4) of the ESA requires that public notice and an opportunity to comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Draft Recovery Plan.

**Contents of the Draft Recovery Plan**

The Draft Recovery Plan presents NMFS' proposed recovery goal, objectives, and criteria, which, when met, would allow the oceanic whitetip shark to be delisted. The proposed demographic and threats-based recovery objectives and criteria are based on the listing factors found in the ESA section 4(a)(1). The proposed demographic and threats-based recovery objectives and criteria for the oceanic whitetip shark address threats from significant population declines, bycatch-related mortality in commercial fisheries, international trade of its fins, inadequate regulatory mechanisms, and identifies stressors that should be monitored for potential future impact, such as climate change. The Draft Recovery Plan also describes specific information on the following: current status of the oceanic whitetip shark, pressures (limiting factors) and threats that have contributed to the species' decline, recovery strategies to address the threats, and site-specific recovery actions with timelines. The Draft Recovery Plan also estimates the time and costs required to implement recovery actions.

The Draft Recovery Implementation Strategy provides specific, prioritized activities necessary to fully implement recovery actions in the Draft Recovery Plan. This stepped-down approach will afford us the ability to modify these activities efficiently to reflect changes in the information available as well as progress towards recovery.

**How NMFS and Others Expect To Use the Plan**

In addition to continuing to carry out actions already underway, such as satellite tag deployment and analysis, genetic sampling, and other research activities, we have begun implementation of other actions as described in the plan, such as gear changes in certain fisheries and developing additional regulatory measures to help protect oceanic whitetip sharks in U.S. waters. After public comment and the adoption of the Final Recovery Plan, our intention is to implement the actions and activities for which we have authority and funding; encourage other Federal, state, and local agencies to implement recovery actions and activities for which they have responsibility, authority, and funding; and work cooperatively with the public and local stakeholders on implementation of other actions and activities. We expect the Recovery Plan to guide us and other Federal agencies in evaluating Federal actions under ESA section 7, as well as in implementing other provisions of the ESA, such as considering permits under section 10, and other statutes.

**Public Comments Solicited**

We are soliciting written comments on the Draft Recovery Plan. All substantive comments received by the date specified above will be considered and incorporated, as appropriate, prior to our decision on whether to approve this Recovery Plan. While we invite comments on all aspects of the Draft Recovery Plan, we are particularly interested in comments on the proposed objectives, criteria, and actions, as well as comments on the estimated time and cost of recovery actions and activities.

*Authority:* 16 U.S.C. 1533(f).

Dated: January 19, 2023.

**Angela Somma,**

*Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2023–01441 Filed 1–24–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement for the Mississippi River Hatchie/Loosahatchie, MS River Mile 775–736, Tennessee and Arkansas, Ecosystem Restoration Feasibility Study

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent; withdrawal.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE), Memphis District is terminating preparation of a Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR–EIS) for the Hatchie-Loosahatchie Mississippi River Ecosystem Restoration Study. A Notice of Intent to prepare the DIFR–EIS was published in the November 4, 2022, issue of the **Federal Register**. The USACE has since determined that a Draft Integrated Feasibility Report and Environmental Assessment (DIFR–EA) rather than an EIS is the appropriate level of environmental documentation for the study.

**DATES:** The DIFR–EA is presently scheduled to be available for public review and comment in early 2023. A final IFR–EA is tentatively scheduled for release in May 2024.

**ADDRESSES:** U.S. Army Corps of Engineers, Memphis District, Attn: CEMVN–PDC–UDC, 167 North Main St., Room B–202, Memphis, Tennessee 38103.

**FOR FURTHER INFORMATION CONTACT:** Mike Thron, U.S. Army Corps of Engineers, Memphis District; phone 901–544–0708; email *LMRRA-Hatchie-Loosahatchie@usace.army.mil.* For additional information about the study, please visit the project website at: *https://www.mvm.usace.army.mil/Missions/Environmental-Stewardship/Hatchie-Loosahatchie-Mississippi-River-Ecosystem-Restoration-Study/.*

**SUPPLEMENTARY INFORMATION:** The Hatchie-Loosahatchie Mississippi River Ecosystem Restoration Study seeks to examine restoring ecological structure and function to the mosaic of habitats along the lower Mississippi River (LMR) and its floodplain between River Miles 775 and 736 including secondary channels and other floodplain aquatic habitats; floodplain forests; and several scarce vegetative communities such as, wetlands, rivercane, riverfront forests, and bottomland hardwood forests. The

study was originally scoped as an EIS. A notice of intent to prepare an EIS was published in the **Federal Register** on November 4, 2022 (87 FR 66681). The scoping comment period ended on December 5, 2022. During scoping, a project website was prepared, press releases and notifications were sent to affected agencies and interested parties, and one virtual public meeting and three in-person public meetings were conducted in Henning, Tennessee, Millington, Tennessee, and Marion, Arkansas, respectively. No adverse comments were received, and all comments were generally supportive of the proposed activities. Additionally, the plan formulation process resulted in a reduced number of measures in the current array of alternatives being considered since the initiation of the study.

The USACE will notify the public in advance of the availability of the draft and final IFR-EAs through press releases, special public notices, and USACE-Memphis District social media platforms. All public review and project related information will continue to be made available at: *https://www.mvm.usace.army.mil/Missions/Environmental-Stewardship/Hatchie-Loosahatchie-Mississippi-River-Ecosystem-Restoration-Study/.*

**James Bodron,**

*Acting Programs Director, Mississippi Valley Division.*

[FR Doc. 2023–01456 Filed 1–24–23; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2022–SCC–0142]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; The Recognition Process for Accrediting Agencies, State Approval Agencies; Evaluation of Foreign Medical, and Foreign Veterinary Accrediting Agencies (e-Recognition)

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before February 24, 2023.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Herman Bounds, 202–453–6128.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* The Recognition Process for Accrediting Agencies, State Approval Agencies; Evaluation of Foreign Medical, and Foreign Veterinary Accrediting Agencies (e-Recognition).

*OMB Control Number:* 1840–0788.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* Individuals and Households.

*Total Estimated Number of Annual Responses:* 17.

*Total Estimated Number of Annual Burden Hours:* 18,351.

*Abstract:* The authority for collecting this information is contained in the Higher Education Act of 1965, as amended § 496 (HEA), and implementing regulations at 34 CFR 602. The data is required in order for recognized accrediting agencies to demonstrate compliance with 34 CFR 602. The Secretary will use these criteria in determining whether an accrediting agency is a reliable authority as to the quality of education or training provided by institutions of higher education they accredit. The data is required for State Agencies for the approval of Vocational Education to demonstrate compliance with 34 CFR 603. The Secretary will use these criterial to determine whether a State Agency for the Approval of Vocational Education is a reliable authority as to the quality of education or training provided by the vocational institutions of higher education they accredit. The data is also required in order for State approval Agencies for Nurse Education to demonstrate compliance with the criteria and procedures for recognition of State Agencies for Approval of Nurse Education published in the January 16, 1969 **Federal Register**. The Secretary will use these criteria in determining whether a state agency is a reliable authority as to the quality of training offered by schools of nursing.

In addition, and in accordance with 34 CFR 600.55, the Secretary is also required to collect information, review, and determine whether the accreditation standards used by foreign countries to accredit medical education programs are comparable to the standards used to accredit medical education programs in the U.S.

Dated: January 19, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–01373 Filed 1–24–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket ID ED–2022–IES–0046]**

### Privacy Act of 1974; System of Records—National Center for Education Statistics (NCES) Longitudinal, Cross-Sectional, and International Studies

**AGENCY:** National Center for Education Statistics, Institute of Education Sciences, Department of Education.

**ACTION:** Notice of a Modified System of Records; correction.

**SUMMARY:** On January 18, 2023, the Department of Education published in the **Federal Register** a notice of a modified system of records (SORN) for the NCES Longitudinal, Cross-Sectional, and International Studies. We are correcting the docket ID provided in that notice. All other information in the SORN, including the February 17, 2023,

deadline for public comments, remains the same.

**DATES:** We must receive your comments on or before February 17, 2023.

**Correction**

In FR Doc. No. 2023–00768, in the **Federal Register** published on January 18, 2023 (88 FR 2896), we make the following correction:

On Page 2896, in the third column, above the title of the **Federal Register** notice, Privacy Act of 1974; System of Records—National Center for Education Statistics (NCES) Longitudinal, Cross-Sectional, and International Studies, revise the docket ID to read: ED–2022–IES–0046.

**FOR FURTHER INFORMATION CONTACT:** Carrie Clarady, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, PCP, 550 12th Street SW, 4th floor, Washington, DC 20202–4160. Telephone: (202) 245–6347. Email: *NCES.Information.Collections@ed.gov.*

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

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

**Mark Schneider,**

*Director, Institute of Education Sciences.*

[FR Doc. 2023–01466 Filed 1–24–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Electricity Advisory Committee

**AGENCY:** Department of Energy, Office of Electricity.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a hybrid open meeting of the Electricity Advisory Committee (EAC). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, February 15, 2023; 1:00 p.m.–5:30 p.m. EST.

Thursday, February 16, 2023; 8:00 a.m.–12:30 p.m. EST.

**ADDRESSES:** National Rural Electric Cooperative Association Headquarters, 4301 Wilson Blvd., Suite 1, Arlington, VA 22203.

Members of the public are encouraged to participate virtually, however, limited physical space is available for members of the public to attend onsite. To register to attend either in-person or virtually, please visit the meeting website: *February 15–16, 2023 Electricity Advisory Committee Meeting | Department of Energy.* Please note, you must register for each day you would like to attend.

**FOR FURTHER INFORMATION CONTACT:** Jayne Faith, Designated Federal Officer, Office of Electricity, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 586–2983 or Email: *Jayne.Faith@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The EAC was established in accordance with the provisions of FACA, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to the electric sector.

**Tentative Agenda**

*February 15, 2023*

12:45 p.m.–1:00 p.m. WebEx Attendee Sign-On

1:00 p.m.–1:15 p.m. Welcome, Introductions, Developments since October Meeting

1:15 p.m.–2:15 p.m. Update from the Office of Electricity

2:15 p.m.–3:15 p.m. Distribution and Design Presentation

3:15 p.m.–3:30 p.m. Break

3:30 p.m.–5:00 p.m. North American Resiliency Model (NAERM) Presentation

5:00 p.m.–5:15 p.m. Wrap-up and Adjourn Day 1

*February 16, 2023*

7:45 a.m.–8:00 a.m. WebEx Attendee Sign-On

8:00 a.m.–8:15 a.m. Opening Remarks

8:15 a.m.–10:00 a.m. Hurricane Resilience EAC Panel Discussion

10:00 a.m.–11:00 a.m. Energy Storage Subcommittee Update and EAC Vote on Biennial Storage Review

11:00 a.m.–11:15 a.m. Break

11:15 a.m.–11:45 a.m. Smart Grid Subcommittee Update and Vote on 8008 Pathways Additional Information: Approach

11:45 p.m.–12:00 p.m. Grid Resilience for National Security Subcommittee Update

12:00 p.m.–12:20 p.m. Public Comments

12:20 p.m.–12:30 p.m. Wrap-up and Adjourn February Meeting of the EAC

The meeting agenda and times may change to accommodate EAC business. For EAC agenda updates, see the EAC website at *February 15–16, 2023 Electricity Advisory Committee Meeting | Department of Energy.*

*Public Participation:* The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on February 16, but must register in advance by 5:00 p.m. Eastern time on February 15. Approximately 20 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement identified by ''Electricity Advisory Committee February 2023 Meeting,'' to Ms. Jayne Faith at *Jayne.Faith@hq.doe.gov.*

*Minutes:* The minutes of the EAC meeting will be posted on the EAC web page at *February 15–16, 2023 Electricity Advisory Committee Meeting | Department of Energy.* They can also be obtained by contacting Ms. Jayne Faith at the address above.

Signed in Washington, DC, on January 19, 2023.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2023–01439 Filed 1–24–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG23–63–000.
*Applicants:* Sonoran Solar Energy, LLC.
*Description:* Sonoran Solar Energy, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5161.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* EG23–64–000.
*Applicants:* Saint Energy Storage II, LLC.
*Description:* Saint Energy Storage II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5164.
*Comment Date:* 5 p.m. ET 2/9/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER21–292–003.
*Applicants:* Dynegy Oakland, LLC.
*Description:* Tariff Amendment: Oakland Power Company LLC submits tariff filing per 35.17(b): Oakland RMR 2021 Joint Offer of Settlem. & Settlem. Agrmt. to be effective 12/31/9998.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5130.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER21–2329–001; ER21–2329–002.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Minok Stewardship Wind LLC to be effective N/A.
*Filed Date:* 1/18/23.
*Accession Number:* 20230118–5177.
*Comment Date:* 5 p.m. ET 2/8/23.

*Docket Numbers:* ER22–2494–001; ER23–857–001; ER23–858–001.
*Applicants:* Monongahela Power Company, Allegheny Energy Supply Company, LLC, FirstEnergy Service Company.
*Description:* FirstEnergy Service Company submits Compliance Filing.
*Filed Date:* 1/17/23.
*Accession Number:* 20230117–5323.
*Comment Date:* 5 p.m. ET 2/7/23.

*Docket Numbers:* ER23–505–001.
*Applicants:* AEP Texas Inc.
*Description:* Tariff Amendment: AEPTX-Monte Alto Windpower 6th A&R GIA (Amend Pending) to be effective 11/14/2022.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5158.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–562–001.
*Applicants:* TGP Energy Management II, LLC.
*Description:* Tariff Amendment: Supplement to Petition for Market-Based Rate Authorization to be effective 2/4/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5168.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–859–000.
*Applicants:* Union Energy Center, LLC.
*Description:* Union Energy Center, LLC submits a Petition for Limited, Prospective Tariff Waiver with Expedited Action of the requirement in Section 25.6.2.3.1 of Attachment S of the NYISO OATT.
*Filed Date:* 1/13/23.
*Accession Number:* 20230113–5355.
*Comment Date:* 5 p.m. ET 1/23/23.

*Docket Numbers:* ER23–889–000.
*Applicants:* Southwestern Public Service Company.
*Description:* § 205(d) Rate Filing: 2023–01–19 SPS GSEC NPEC IA Skellytown 750–SPS to be effective 3/21/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5003.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–890–000.
*Applicants:* Basin Electric Power Cooperative.
*Description:* Initial rate filing: Basin Electric Power Cooperative, Submission of O&M and Transmission Agreements to be effective 7/10/2020.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5010.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–891–000.
*Applicants:* Basin Electric Power Cooperative.
*Description:* Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreements with MDU to be effective 4/20/2022.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5019.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–892–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Enhancements to Certain Credit Provisions in OATT Att. Q to be effective 3/21/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5062.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–893–000.
*Applicants:* Crane Brook Solar Project, LLC.
*Description:* Request of Crane Brook Solar Project, LLC for Prospective Tariff Waiver, Expedited Action, and Shortened Comment Period.
*Filed Date:* 1/18/23.
*Accession Number:* 20230118–5174.
*Comment Date:* 5 p.m. ET 1/25/23.

*Docket Numbers:* ER23–894–000.
*Applicants:* North Seneca Solar Project, LLC.
*Description:* Request of North Seneca Solar Project, LLC for Prospective Tariff Waiver, Expedited Action, and Shortened Comment Period.
*Filed Date:* 1/18/23.
*Accession Number:* 20230118–5175.
*Comment Date:* 5 p.m. ET 1/25/23.

*Docket Numbers:* ER23–895–000.
*Applicants:* Arizona Public Service Company.
*Description:* § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B Revisions to be effective 3/27/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5069.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–896–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: County Line Solar LGIA Termination Filing to be effective 1/19/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5087.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–897–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Irwin Solar I LGIA Termination Filing to be effective 1/19/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5089.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–898–000.
*Applicants:* Ridgewind Power Partners, LLC.
*Description:* § 205(d) Rate Filing: Ridgewind Power Partners, LLC MBR Tariff Update to be effective 3/21/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5115.
*Comment Date:* 5 p.m. ET 2/9/23.

*Docket Numbers:* ER23–899–000.
*Applicants:* Northwest Power Pool.
*Description:* § 205(d) Rate Filing: Service Agreement No. 1; WRAPA Between WPP and Bonneville Power Administration to be effective 1/1/2023.

*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5120.
*Comment Date:* 5 p.m. ET 2/9/23.
*Docket Numbers:* ER23–900–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5048, Queue No. AD1–062 to be effective 12/20/2022.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5121.
*Comment Date:* 5 p.m. ET 2/9/23.
*Docket Numbers:* ER23–901–000.
*Applicants:* Northwest Power Pool.
*Description:* § 205(d) Rate Filing: Service Agreement No. 2; WRAPA Between WPP and Powerex Corp to be effective 1/1/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5122.
*Comment Date:* 5 p.m. ET 2/9/23.
*Docket Numbers:* ER23–902–000.
*Applicants:* AEP Texas Inc.
*Description:* § 205(d) Rate Filing: AEPTX-Electra Energy Project Generation Interconnection Agreement to be effective 1/3/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5135.
*Comment Date:* 5 p.m. ET 2/9/23.
*Docket Numbers:* ER23–904–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2023–01–19_Shortage and Near-Shortage Pricing Enhancement to be effective 3/21/2023.
*Filed Date:* 1/19/23.
*Accession Number:* 20230119–5152.
*Comment Date:* 5 p.m. ET 2/9/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 19, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–01454 Filed 1–24–23; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OGC–2020–0020; FRL–10569–01–OGC]**

### Proposed Information Collection Request; Comment Request; Renewal of Existing Information Collection Request for Confidential Business Information Substantiation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Renewal of Existing Information Collection Request for Confidential Business Information Substantiation'' (EPA ICR No. 1665.15, OMB Control No. 2020–0003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through September 20, 2023. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before March 27, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OGC–2020–0020 online using *www.regulations.gov* (our preferred method), by email to *hq.foia@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Brandon A. Levine, Office of General Counsel, (2310A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–6625; email address: *levine.brandon@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* EPA established the requirements set forth in 40 CFR part 2, subpart B, ''Confidentiality of Business Information.'' The requirements govern CBI claims. The requirements include the handling by the Agency of business information, which is or may be entitled to confidential treatment; requiring business submitters to substantiate CBI claims; and determining whether such information is entitled to confidential treatment for reasons of business confidentiality. This request to renew an existing ICR allows the Agency to continue collecting information the Agency requires to make final determinations regarding whether information claimed as confidential is entitled to confidential treatment under EPA's CBI regulations.

*Form Numbers:* None.

*Respondents/affected entities:* Respondents include any entity submitting information claimed as CBI to EPA. EPA receives such information from both the manufacturing (SIC codes 20–39) and non-manufacturing sectors (no SIC codes identified).

*Respondent's obligation to respond:* Voluntary and mandatory.

*Estimated number of respondents:* 225 (per year) (total).

*Frequency of response:* One-time submission for information claimed as CBI.

*Total estimated burden:* 3,217.5 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $1,287,000 (per year), includes $0 annualized capital or operation & maintenance costs.

*Changes in Estimates:* There is an increase of 2,465.1 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. Since the last ICR renewal, the Agency has experienced a modest increase in the number of respondents. Additionally, after consulting with a sample of respondent businesses (or respective outside counsels), EPA determined the average estimated burden for each response has increased compared with the ICR currently approved by OMB. Calculating the burden for responding to a substantiation request letter is fact-specific, and the burden can vary based on the following factors: a respondent's familiarity with recent changes in the applicable law, the volume and complexity of the CBI claims asserted, and/or familiarity with the CBI substantiation request letters and substantiation process. As part of consulting with respondent businesses, EPA received burden estimates ranging from as few as 5 hours to as many as nearly 40 hours to substantiate varying amounts of CBI claims. The average estimated burden across the responses that the Agency received is approximately 14.3 hours per response. The median estimated burden is approximately 10 hours per response. For purposes of this ICR renewal, the Agency calculated the estimated burden using the average.

**Charlotte Youngblood,**

*Acting Associate General Counsel.*

[FR Doc. 2023–01411 Filed 1–24–23; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0233; FR ID 123311]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before March 27, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0233.

*Title:* Part 54—Rate-of-Return Carrier Universal Service Reporting Requirements.

*Form Number:* FCC Form 507, FCC Form 508 and FCC Form 509.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 1,095 respondents; 4,044 responses.

*Estimated Time per Response:* 1–22 hours.

*Frequency of Response:* On occasion and annual reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in *47 U.S.C. 151–154, 214, 218–220, 221(c), 254,* and *303(r).*

*Total Annual Burden:* 43,638 hours.

*Total Annual Cost:* No Cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* No assurance of confidentiality has been given regarding the information. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under *47 CFR 0.459* of the FCC's rules.

*Needs and Uses:* In order to determine which carriers are entitled to universal service support, all rate-of-return regulated (rate-of-return) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by section 54.1305 for each of its study areas and, if applicable, for each wire center as that term is defined in *47 CFR part 54.* See *47 CFR 54.1305* and *54.5.* The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated occasionally pursuant to section 54.1306. See *47 CFR 54.1306.* Pursuant to section 54.1307, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. See *47 CFR 54.1307.* An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in section 51.5 of the Commission's rules. See *47 CFR 51.5.*

In March 2016, the Commission adopted the Rate-of-Return Reform Order to continue modernizing the universal service support mechanisms for rate-of-return carriers. The Rate-of-Return Reform Order replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. In March 2016, the Commission adopted the Rate-of-Return Reform Order to continue modernizing the universal service support mechanisms for rate-of-return carriers. The Rate-of-Return Reform Order

replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. For the purposes of calculating and monitoring CAF–BLS, rate-of-return carriers that receive CAF–BLS must file common line and consumer broadband-only loop counts on FCC Form 507, forecasted common line and consumer broadband-only loop costs and revenues on FCC Form 508, and actual common line and consumer broadband-only loop costs and revenues on FCC Form 509. See *47 CFR 54.903(a).*

In December 2018, the Commission adopted the December 2018 Rate-of-Return Reform Order to require rate-of-return carriers that receive Alternative Connect American Model (A–CAM) or Alaska Plan support to file line count data on FCC Form 507 as a condition of high-cost support. Historically, all rate-of-return carriers received CAF BLS or, prior to that, ICLS, and were required to file line count data on FCC Form 507 as a condition of that support. In recent years, some rate-of-return carriers have elected to receive A–CAM I, A–CAM II, or Alaska Plan instead, and those carriers were not required to file line count data because the requirement to file applied only to rate-of-return carriers receiving CAF BLS. In order to restore a data set that the Commission relied on to evaluate the effectiveness of its high-cost universal service programs, the Commission revised its rules in that Order to require all rate-of-return carriers to file that data. While carriers receiving CAF–BLS must file the line count data on March 31 for line counts as of the prior December 31, the A–CAM I, A–CAM II, and Alaska Plan carriers will be required to file on July 1 of each year to coincide with other existing requirements in OMB Control No. 3060–0986. Connect America Fund *et al.,* WC Docket No. 10–90 Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 33 FCC Rcd 11893 (2018) (2018 Rate-of-Return Reform Order). See also *47 CFR 54.313(f)(5).*

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2023–01462 Filed 1–24–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1126; FR ID 123425]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before March 27, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1126.

*Title:* Testing and Logging Requirements for Wireless Emergency Alerts (WEA).

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 76 Participating CMS Providers; 429,020 Responses.

*Estimated Time per Response:* 0.000694 hours (2.5 seconds) to generate each alert log; 2 hours to respond to each request for alert log data or information about geo-targeting.

*Frequency of Response:* Monthly and on occasion reporting requirements and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i) and (o), 301, 301(r), 303(v), 307, 309, 335, 403, 544(g), 606 and 615 of the Communications Act of 1934, as amended, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

*Total Annual Burden:* 119,021 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* Participating CMS Providers shall make available upon request to the Commission and FEMA, and to emergency management agencies that offer confidentiality protection at least equal to that provided in the federal Freedom of Information Act (FOIA) their alert logs and information about their approach to geo-targeting insofar as the information pertains to alerts initiated by that emergency management agency.

*Needs and Uses:* The Commission adopted requirements for Participating CMS Providers to log the basic attributes of alerts they receive at their Alert Gateway, to maintain those logs for at least 12 months, to make those logs available upon request to the Commission and FEMA, and to emergency management agencies that offer confidentiality protection at least equal to that provided by federal FOIA. The Commission also requires Participating CMS Providers to disclose information regarding their capabilities for geo-targeting Alert Messages upon request to such emergency management agencies insofar as it would pertain to Alert Messages initiated by that emergency management agency. These recordkeeping and reporting requirements have potential to increase emergency managers' confidence that WEA will work as intended when

needed. This increased confidence in system availability encourages emergency management agencies that do not currently use WEA to become authorized. These reporting and recordkeeping requirements also help to ensure a fundamental component of system integrity. Alert logs are necessary to establish a baseline for system integrity against which future iterations of WEA can be evaluated. Without records that can be used to describe the quality of system integrity, and the most common causes of message transmission failure, it would be difficult to evaluate how any changes to WEA may affect system integrity.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2023–01436 Filed 1–24–23; 8:45 am]

**BILLING CODE 6712–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–Q–2023–01; Docket No. 2023–0002; Sequence No. 4]**

### Request for Nominations; Federal Secure Cloud Advisory Committee

**AGENCY:** Federal Acquisition Service (Q), General Services Administration (GSA).

**ACTION:** Notice. The U.S. General Services Administration (GSA) is seeking nominations for membership to the Federal Secure Cloud Advisory Committee (the Committee).

**SUMMARY:** GSA is seeking nominations for membership to the Federal Secure Cloud Advisory Committee (hereinafter ''the Committee'' or ''the FSCAC''), a Federal advisory committee required by statute.

**DATES:** GSA will consider complete nominations that are received no later than Thursday, February 9, 2023.

**ADDRESSES:** Nominations will be accepted electronically. Please submit nominations via *https://forms.gle/iuBc67bMYjo1xB5V6,* and email accompanying documents to *fscac@gsa.gov* with the subject line: FSCAC NOMINATION—[Nominee Name].

**FOR FURTHER INFORMATION CONTACT:** Zach Baldwin, Federal Risk and Authorization Management Program, 202–536–8216, *fscac@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

GSA, in compliance with the FedRAMP Authorization Act of 2022, is required to establish the Federal Secure Cloud Advisory Committee (FSCAC), a statutory advisory committee in accordance with the provisions of FACA (5 U.S.C. 10). The Federal Risk and Authorization Management Program (FedRAMP) within GSA is responsible for providing a standardized, reusable approach to security assessment and authorization for cloud computing products and services that process unclassified information used by agencies.

The FSCAC will provide advice and recommendations to the Administrator of GSA, the FedRAMP Board, and agencies on technical, financial, programmatic, and operational matters regarding the secure adoption of cloud computing products and services. The FSCAC will ensure effective and ongoing coordination of agency adoption, use, authorization, monitoring, acquisition, and security of cloud computing products and services to enable agency mission and administrative priorities. The purposes of the Committee are:

- To examine the operations of FedRAMP and determine ways that authorization processes can continuously be improved, including the following:
  - Measures to increase agency reuse of FedRAMP authorizations.
  - Proposed actions that can be adopted to reduce the burden, confusion, and cost associated with FedRAMP authorizations for cloud service providers.
  - Measures to increase the number of FedRAMP authorizations for cloud computing products and services offered by small businesses concerns (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)).
  - Proposed actions that can be adopted to reduce the burden and cost of FedRAMP authorizations for agencies.
- Collect information and feedback on agency compliance with and implementation of FedRAMP requirements.
- Serve as a forum that facilitates communication and collaboration among the FedRAMP stakeholder community.

The Federal Secure Cloud Advisory Committee will meet no fewer than three (3) times a calendar year Meetings shall occur as frequently as needed, called, and approved by the DFO. Meetings will be held virtually or in person. Members will serve without compensation and may be allowed travel expenses, including per diem, in accordance with 5 U.S.C. 5703.

The Committee shall be comprised of not more than 15 members who are qualified representatives from the public and private sectors, appointed by the Administrator, in consultation with the Director of OMB, as follows:

i. The GSA Administrator or the GSA Administrator's designee, who shall be the Chair of the Committee.

ii. At least one representative each from the Cybersecurity and Infrastructure Security Agency and the National Institute of Standards and Technology.

iii. At least two officials who serve as the Chief Information Security Officer within an agency, who shall be required to maintain such a position throughout the duration of their service on the Committee.

iv. At least one official serving as Chief Procurement Officer (or equivalent) in an agency, who shall be required to maintain such a position throughout the duration of their service on the Committee.

v. At least one individual representing an independent assessment organization.

vi. At least five representatives from unique businesses that primarily provide cloud computing services or products, including at least two representatives from a small business (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a))).

vii. At least two other representatives from the Federal Government as the Administrator determines to be necessary to provide sufficient balance, insights, or expertise to the Committee.

Each member shall be appointed for a term of three (3) year terms, except the initial terms, which may be staggered one (1), two (2) or three (3) year terms to establish a rotation in which one third of the members are selected. No member shall be appointed for more than two (2) consecutive terms nor shall any member serve for more than six (6) consecutive years. GSA values opportunities to increase diversity, equity, inclusion and accessibility on its federal advisory committees.

Members will be designated as Regular Government Employees (RGEs) or Representative members as appropriate and consistent with Section 3616(d) of the FedRAMP Authorization Act of 2022. GSA's Office of General Counsel will assist the Designated Federal Officer (DFO) to determine the advisory committee member designations. Representatives are members selected to represent a specific point of view held by a particular group, organization, or association. Members who are full time or permanent part-time Federal civilian officers or employees shall be appointed to serve as Regular Government Employee (RGE)

members. In accordance with OMB Final Guidance published in the **Federal Register** on October 5, 2011 and revised on August 13, 2014, federally registered lobbyists may not serve on the Committee in an individual capacity to provide their own individual best judgment and expertise, such as RGEs members. This ban does not apply to lobbyists appointed to provide the Committee with the views of a particular group, organization, or association, such as Representative members.

**Nominations**

Nominations for membership on the Committee will be accepted until Thursday, February 9, 2023. There are two parts to submitting a nomination. First, complete the information requested via this electronic form *https://forms.gle/iuBc67bMYjo1xB5V6.* Next, email your CV or resume and a letter of endorsement from your organization or organization's leadership to *fscac@gsa.gov* with the subject line: FSCAC NOMINATION—[Nominee Name].

Federal agencies may nominate qualified federal employees for Federal membership.

Non-Federal nominees must meet the following criteria in accordance with the FedRAMP Authorization Act of 2022:

- Individuals representing an independent assessment organization; or
- Representatives from unique businesses that primarily provide cloud computing services or products, including at least 2 representatives from a small business concern (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a))).

**Brian Conrad,**

*FedRAMP Director (Acting)/Cybersecurity Program Manager, Federal Risk and Authorization Management Program, General Services Administration.*

[FR Doc. 2023–01481 Filed 1–24–23; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DD23–001, Birth Defects Study To Evaluate Pregnancy ExposureS (BD–STEPS); Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DD23–001, Birth Defects Study To Evaluate Pregnancy exposureS (BD–STEPS); March 28–29, 2023, 10 a.m.–5 p.m., EDT, Teleconference, in the original FRN. The meeting was published in the **Federal Register** on December 23, 2023, Volume 87, Number 246, page 78968.

The meeting is being amended to change the meeting date and time and should read as follows:

*Date:* March 29, 2023.

*Time:* 10 a.m.–6 p.m., EDT.

The meeting is closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Catherine Barrett, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–3, Atlanta, Georgia 30341–3717; Telephone: (404) 718–7664; Email: *CBarrett@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2023–01435 Filed 1–24–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 1009(d) of 5 U.S.C. 10, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 117–286. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–23–002, Occupational Safety and Health Surveillance, Collaboration, Education, and Translation Review.

*Date:* March 22, 2023.

*Time:* 1 p.m.–3 p.m. EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Dan Hartley, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506; Telephone: (304) 285–5812; Email: *DHartleycdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2023–01434 Filed 1–24–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2022–N–0198]**

### Mark Moffett; Denial of Hearing; Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is denying a request for a hearing submitted by Mark Moffett and is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Mr. Moffett from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Moffett was convicted of multiple felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. Mr. Moffett was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Mr. Moffett submitted a request for hearing but failed to file with the Agency information and analysis sufficient to create a basis for a hearing.

**DATES:** The order is applicable January 25, 2023.

**ADDRESSES:** Any application for termination of debarment by Mr. Moffett under section 306(d) of the FD&C Act (21 U.S.C. 335a(d)) (application) may be submitted as follows:

*Electronic Submissions*

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application 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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All applications must include the Docket No. FDA–2022–N–0198. An application will be placed in the docket and, unless 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.

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*Docket:* For access to the docket, 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, between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

**FOR FURTHER INFORMATION CONTACT:** Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4206, Silver Spring, MD 20993, *Rachael.Linowes@fda.hhs.gov,* 240–402–5931.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 306(a)(2)(B) of the FD&C Act mandates permanent debarment if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act.

On January 18, 2022, the U.S. District Court for the District of Massachusetts entered a judgment against Mr. Moffett, after a jury verdict, for nine counts of wire fraud in violation of 18 U.S.C. 1343 and five counts of aggravated identify theft in violation of 18 U.S.C. 1028A(a)(1). The court sentenced Mr. Moffett to 54 months in prison, $1,500 restitution payment, and upon his release from prison, a 36-month supervised release. The bases for his convictions stem from his employment with Aegerion Pharmaceuticals, Inc. (Aegerion), a pharmaceutical company located in Massachusetts, which held an approved drug application for the drug JUXTAPID (NDA 203858).

According to FDA's Office of Regulatory Affairs' (ORA) proposal to debar, discussed in more detail below, JUXTAPID was subject to risk evaluation and mitigation strategies (REMS) requirements due to JUXTAPID's risk of liver toxicity. JUXTAPID prescribers had to enroll in the JUXTAPID REMS program and attest that the patients to which they prescribed JUXTAPID had a diagnosis consistent with homozygous familial hypercholesterolemia (HoFH). JUXTAPID was only distributed by certain pharmacies and prior to dispensing, the pharmacy had to verify that the prescriber was certified in the JUXTAPID REMS program. Additionally, insurance companies would not pay for JUXTAPID if the patient did not have a HoFH diagnosis, so to facilitate insurance claims processing for patients, Aergerion established the patient access program (PAP), and the PAP personnel would call health insurance companies to obtain insurance coverage determinations for patients who had been prescribed JUXTAPID.

According to the proposal to debar, Mr. Moffett was a sales representative for Aegerion. Aegerion paid its sales representatives a base salary, plus bonuses for new prescriptions and bonuses for patients remaining on JUXTAPID over time. ORA found that Mr. Moffett schemed to enrich himself through the bonus program, and as part

of that scheme, from on or about January 2014 through at least October 2015, convinced doctors to prescribe JUXTAPID for statin intolerant patients who had not been diagnosed with HoFH. According to the proposal to debar, Mr. Moffett, among other actions:

1. Directed and caused JUXTAPID REMS forms, statements of medical necessity, and insurance forms to be submitted to insurance plans for JUXTAPID coverage by falsely representing that the prescriptions were for patients with HoFH;

2. Obtained fraudulent REMS forms from prescribers or obtained prescriptions from providers who had not treated relevant patients; and

3. Sent falsified prior authorizations or caused the falsified prior authorizations forms to be sent to PAP personnel, causing them to communicate the false information to insurance companies.

ORA's proposal to debar stated that Mr. Moffett received tens of thousands of dollars in bonuses for making purported sales of JUXTAPID.

By letter dated July 5, 2022, ORA notified Mr. Moffett of a proposal to permanently debar him from providing services in any capacity to a person having an approved or pending drug product application, based on the multiple convictions and underlying conduct outlined above. In addition to outlining the above information, ORA found that the wire fraud and aggravated identity theft felonies were for conduct relating to the regulation of drug products. ORA found that Mr. Moffett's actions undermine the process for the regulation of drugs because Mr. Moffett schemed to deceive health insurance companies into covering JUXTAPID for ineligible patients. Additionally, ORA found that Mr. Moffett's actions circumvented the REMS program, which subverted safety protocols put into place as part of JUXTAPID's approval. Therefore, ORA found that permanent debarment was appropriate.

By letter, dated August 4, 2022, Mr. Moffett submitted a document titled ''request for a hearing.'' This letter did not contain an actual request for a hearing, but the Director of the Office of Scientific Integrity (OSI) construed it as one. In addition, OSI granted Mr. Moffett an extension to submit any information or factual analyses in support of his request for a hearing until October 31, 2022. Mr. Moffett submitted another letter on October 11, 2022.

Under the authority delegated to her by the Commissioner of Food and Drugs, the Chief Scientist has considered Mr. Moffett's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)).

Neither of Mr. Moffett's letters provides any information or factual analysis in rebutting the proposed findings in ORA's proposal to debar him. Instead, both letters state that he is currently appealing the convictions on which the proposed debarment is based. Specifically, in Mr. Moffett's October 11, 2022, letter, he requests a delay in the debarment proceeding until the conclusion of his appeal, and states that, ''if a hearing is scheduled before [he] receive[s] the results of [his] appellate appeal,'' he would like to know when the hearing will take place so that he may participate.

As previously explained in OSI's letter to Mr. Moffett granting him an extension, under section 306(l) of the FD&C Act, ''a person is considered to have been convicted of a criminal offense . . . (A) when a judgment of conviction has been entered against the person by a Federal or State court, regardless of whether there is an appeal pending.'' A pending appeal is therefore not a ground for postponing either ruling on a hearing request or conducting a hearing on a proposed debarment. However, if Mr. Moffett's appeal ultimately results in the convictions being overturned, he may seek termination of his debarment (see section 306(d)(B)(ii) of the FD&C Act).

Given that Mr. Moffett did not submit any information or factual analyses addressing the findings in ORA's proposal to debar him, Mr. Moffett has not raised a genuine and substantial issue of fact regarding whether he was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. Therefore, OSI denies Mr. Moffett's request for a hearing.

## II. Findings and Order

The Chief Scientist, under section 306(a)(2) of the FD&C Act and under the authority delegated to her, finds that Mr. Mark Moffett has been convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing findings, Mr. Moffett is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Moffett, in any capacity during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Moffett, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Moffett during his period of debarment.

Dated: January 19, 2023.

**Namandje N. Bumpus,**

*Chief Scientist.*

[FR Doc. 2023–01426 Filed 1–24–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–D–0169]**

### Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' This guidance describes FDA's regulatory and enforcement priorities regarding compounding certain ibuprofen oral suspension products in outsourcing facilities for administration in hospitals and health systems.

**DATES:** The announcement of the guidance is published in the **Federal Register** on January 25, 2023.

**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–2023–D–0169 for ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' 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 guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Ian Reynolds, Office of Compounding Quality and Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–7079.

**SUPPLEMENTARY INFORMATION:**

## I. Background

We are announcing the availability of a guidance for industry entitled ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' This guidance is being implemented without prior public comment because FDA has determined that prior public participation for this guidance is not feasible or appropriate (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(h)(1)(C)) and 21 CFR 10.115(g)(2)). This guidance document is being implemented immediately to bolster access to ibuprofen oral suspension products in hospitals and health systems during the current surge in respiratory infections, but it remains subject to comment in accordance with the Agency's good guidance practices.

This guidance describes the Agency's regulatory and enforcement priorities regarding the compounding of certain ibuprofen oral suspension products in outsourcing facilities for administration in hospitals and health systems. The United States is currently experiencing a surge in three viruses: Coronavirus Disease 2019 (COVID–19), respiratory syncytial virus (RSV), and influenza. Each of these viruses may produce fever in young children. FDA has received reports related to increased demand for pediatric fever-reducing medications, including ibuprofen oral suspension products. Further, FDA has received a number of reports related to hospitals and health systems experiencing challenges with obtaining these medications to use in the treatment of pediatric patients with fevers as well as for adults who are unable to swallow solid oral dosage forms (*e.g.* persons with feeding tubes). FDA is continually assessing the needs and circumstances related to the temporary policy set forth in this guidance, and as relevant needs and circumstances evolve, FDA intends to update, modify, or withdraw this policy as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the FD&C Act.'' 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 collection of information for current good manufacturing practice requirements has been approved under OMB control number 0910–0139. The collections of information for adverse event reporting and human drug compounding under sections 503A and 503B of the FD&C Act have been approved under OMB control number 0910–0800. The collections of information for adverse event and product experience reporting under the MedWatch System has been approved under OMB control number 0910–0291.

### III. Electronic Access

Persons with access to the internet may obtain the document 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: January 20, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–01467 Filed 1–23–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–1988]**

## Poornanand Palaparty; Denial of Hearing; Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is denying Poornanand Palaparty's (Dr. Palaparty's) request for a hearing and issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Dr. Palaparty for 3 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Palaparty was convicted of a misdemeanor under Federal law for causing the introduction or delivery for introduction into interstate commerce of drugs that were misbranded under the FD&C Act. Additionally, FDA finds that the type of conduct underlying Dr. Palaparty's conviction undermines the process for the regulation of drugs. In determining the appropriateness and period of Dr. Palaparty's debarment, FDA considered the relevant factors listed in the FD&C Act. Dr. Palaparty failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

**DATES:** This order is applicable January 25, 2023.

**ADDRESSES:** Any application for termination of debarment by Dr. Palaparty under section 306(d) of the FD&C Act (application) may be submitted as follows:

*Electronic Submissions*

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*
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*Written/Paper Submissions*

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*Instructions:* All applications must include the Docket No. FDA–2018–N–1988. Received applications 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.

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*Docket:* For access to the docket, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

**FOR FURTHER INFORMATION CONTACT:** Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4206, Silver Spring, MD 20993, 240–402–5931.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if FDA finds that (1) the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the

FD&C Act and (2) the type of conduct underlying the conviction undermines the process for the regulation of drugs under the FD&C Act.

On September 5, 2013, Dr. Palaparty pled guilty to a misdemeanor for introducing a misbranded drug into interstate commerce, in violation of section 301(a) of the FD&C Act (21 U.S.C. 331(a)). According to the criminal information to which Dr. Palaparty pled guilty, between July 4, 2004, and February 26, 2009, Dr. Palaparty, an oncologist, purchased and received prescription oncology drugs from a distributer located in Canada. Dr. Palaparty's actions caused the introduction into interstate commerce of drugs that were misbranded under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) because their labeling did not bear adequate directions for use. On November 12, 2014, the U.S. District Court for the Northern District of Ohio entered a judgment of conviction against Dr. Palaparty for his violation of section 301(a) and sentenced him to 1 year of probation.

By letter dated July 13, 2018, FDA's Office of Regulatory Affairs (ORA) proposed to debar him for 3 years from providing services in any capacity to a person that has an approved or pending drug product application and provided him with an opportunity to request a hearing. The proposal explained that FDA based the proposed debarment on his misdemeanor conviction. The proposal outlined findings concerning the four relevant factors that ORA considered in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act: (1) the nature and seriousness of the offense, (2) the nature and extent of management participation in the offense, (3) the nature and extent of voluntary steps to mitigate the impact on the public, and (4) prior convictions under the FD&C Act or other Acts involving matters within FDA's jurisdiction. ORA found that the first two factors were unfavorable factors, and the last two factors were favorable for Dr. Palaparty. The notice concluded that the unfavorable factors outweighed the favorable factors and that a 3-year debarment was appropriate.

By letters dated August 10, 2018, and September 10, 2018, Dr. Palaparty, through counsel, requested a hearing on the proposal. Dr. Palaparty argues that FDA failed to consider certain facts underlying his conviction and therefore inappropriately weighed the factors under section 306(c)(3) of the FD&C Act. Dr. Palaparty primarily disputes ORA's assessment of the nature and seriousness of his offense. Separately, Dr. Palaparty requests that FDA consider a settlement between the Agency and himself as an alternative to debarment.

Under the authority delegated to her by the Commissioner of Food and Drugs, the Chief Scientist has considered Dr. Palaparty's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials, or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see § 12.24(b) (21 CFR 12.24(b))).

Based on this review, the Chief Scientist concludes that Dr. Palaparty has failed to raise a genuine and substantial issue of fact requiring a hearing and that he has thus not justified a hearing. Given the undisputed factual findings in the proposal to debar, the Chief Scientist finds that a 3-year debarment period is appropriate.

## II. Arguments

In the proposal to debar, ORA relied on the criminal information and the Government's sentencing memorandum in addressing the nature and seriousness of the offense. ORA noted that Dr. Palaparty ''continued purchasing misbranded drugs despite being notified by FDA on multiple occasions between 2004 and 2009 that foreign drug shipments destined for [his] office had been detained and appeared to be unlawfully marketed unapproved new drugs.'' ORA found that his ''conduct created a risk of injury to consumers by exposing patients to unapproved new drugs'' and that his conduct undermined the Agency's drug approval process and oversight of the manufacture, importation, and sale of drug products in interstate commerce in the United States.

In his request for a hearing, Dr. Palaparty disagrees with ORA's assertion that his conduct created a risk of injury to consumers by exposing patients to unapproved new drugs. Dr. Palaparty claims that Agency investigators ''told him that he could use the rest of the unapproved drugs as long as he did not order more of them.'' Dr. Palaparty suggests that ''[i]f these drugs truly posed a great risk to the public, the investigators would have instructed him to destroy the remaining drugs and would not have allowed him to use his remaining supply.''

Even if we assume what Dr. Palaparty asserts is true—that, on a given day in 2009, FDA agents told Dr. Palaparty he could use up the limited stock of unapproved new drugs he had in his office, instead of destroying the drugs—this alone would not establish that his overall pattern of conduct posed no risk to his patients and thus the public. Instead, his overall pattern of conduct over a 5-year period establishes that Dr. Palaparty willingly created a risk of injury to his patients. Dr. Palaparty does not dispute that, between 2004 and 2009, he placed multiple orders for unapproved oncology drugs, including Kytril, Gemzar, Oxaliplatin, Irinotecan, Camptosar, Zometa, Gemcitabine, Campto, Zoledronic Acid, and Carboplatin, manufactured outside of the United States. Additionally, Dr. Palaparty does not dispute that he continued purchasing these misbranded drugs despite being notified by FDA, on multiple occasions between 2004 and 2007, that these foreign drug shipments destined for his office had been detained and appeared to be unlawfully marketed unapproved new drugs. These undisputed facts, combined with the record underlying Dr. Palaparty's guilty plea, provide an ample basis for ORA to conclude that Dr. Palaparty should be debarred and that the ''nature and seriousness of [his] . . . offense'' is a factor that should be weighed against him in determining the length of his debarment.

Under § 12.24(b)(3), FDA will deny a hearing if ''the data and information submitted are insufficient to justify the factual determination urged, even if accurate.'' Applying this standard, Dr. Palaparty has offered allegations that, even if true, are insufficient to justify the larger factual determination he seeks: namely, that the larger pattern of his conduct posed no risk to his patients and the public and thus, by extension, did not interfere with FDA's ability to oversee the manufacture, importation, and sale of drug products in interstate commerce. Therefore, Dr. Palaparty fails to create an issue for hearing with respect to whether the nature and seriousness of the offense is an unfavorable factor in determining the appropriateness and length of debarment.

Dr. Palaparty does not object to the rest of ORA's findings in the proposal to debar. Regarding the nature and extent of management participation in the offense, Dr. Palaparty concedes that he held a position of authority in his medical practice as a licensed physician. Dr. Palaparty's admission to his position of authority warrants treating the management participation factor as an unfavorable factor in determining the appropriateness and

length of debarment. With respect to the third and fourth factors, he supports the findings that he mitigated the impact of his offenses on the public by fully cooperating with investigators and that he had no convictions involving matters within the jurisdiction of FDA.

Considering all the applicable factors listed in section 306(c)(3) of the FD&C Act, the Chief Scientist finds that Dr. Palaparty's conviction and underlying conduct warrant the 3-year debarment proposed by ORA. It is undisputed that Dr. Palaparty pled guilty to a serious misdemeanor offense by causing the introduction into interstate commerce of drugs that were misbranded by virtue of their unapproved status. It is undisputed that Dr. Palaparty had a managerial role, further cementing the serious nature of Dr. Palaparty's conduct. While Dr. Palaparty ultimately took voluntary steps to mitigate the effect on the public health from the unlawful conduct and does not have any previous criminal convictions related to matters within FDA's jurisdiction, those considerations do not outweigh the nature and seriousness of the conduct to a degree that would warrant a debarment period of less than 3 years. Therefore, a 3-year debarment is appropriate.

Separately, Dr. Palaparty requests that, in lieu of debarment by FDA, he enter into a settlement agreement with FDA whereby he would voluntarily agree to the terms of the proposed debarment for the proposed period of debarment and to not provide services in any capacity to a person that has an approved or pending drug product application. Dr. Palaparty appears to be proposing an informal resolution of this debarment matter. However, his request is now moot, given the foregoing findings, which establish that Dr. Palaparty has failed to justify a hearing with respect to ORA's proposal to debar him for 3 years, and support his debarment for the proposed time.

### III. Findings and Order

Therefore, the Chief Scientist, under section 306(b)(2)(B)(i)(I) of the FD&C Act and authority delegated to her by the Commissioner of Food and Drugs, finds that Dr. Palaparty has been convicted of a misdemeanor under Federal law for causing the introduction into interstate commerce of prescription drugs that were misbranded under the FD&C Act and that the conduct underlying the conviction undermines the process for the regulation of drugs. FDA considered the relevant factors listed in section 306(c)(3) of the FD&C Act and determined that a 3-year debarment is appropriate.

As a result of the foregoing findings, Dr. Palaparty is debarred for 3 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective January 25, 2023, (see 21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug application who knowingly uses the services of Dr. Palaparty, in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Palaparty, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Palaparty during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Dated: January 19, 2023.

**Namandje N. Bumpus,**

*Chief Scientist.*

[FR Doc. 2023–01419 Filed 1–24–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Meeting Notice Correction

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice; correction.

**SUMMARY:** HRSA published a document in the **Federal Register** of December 20, 2022, concerning a meeting of the National Advisory Council on the National Health Service Corps (NACNHSC). The document referenced the incorrect year. The meeting date erroneously stated a meeting will occur in November 2022 when it should state November 2023.

**FOR FURTHER INFORMATION CONTACT:** Diane Fabiyi-King, Designated Federal Official, Division of National Health Service Corps, HRSA, 5600 Fishers Lane, Room 14N23, Rockville, Maryland 20857; phone (301) 443–3609; or *NHSCAdvisoryCouncil@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of December 20, 2022, FR Doc. 2022–27532, page 77850, column 1, section two, bullet three, correct the ''November 14, 2022, 9:00 a.m.–5:00 p.m. ET and November 15, 2022, 9 a.m.–2 p.m. ET'' caption to read: November 14, 2023, 9 a.m.–5 p.m. ET and November 15, 2023, 9 a.m.–2 p.m. ET.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2023–01448 Filed 1–24–23; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Biodefense Science Board; Public Meeting

**AGENCY:** Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The National Biodefense Science Board (NBSB or the Board), authorized under Section 319M of the Public Health Service (PHS) Act, as added by Section 402 of the Pandemic and All-Hazards Preparedness Act of 2006 and amended by Section 404 of the Pandemic and All-Hazards Preparedness Reauthorization Act, will hold a virtual, public meeting on March 9, 2023. The NBSB provides expert advice and guidance to the Department of Health and Human Services (HHS) regarding current and future chemical, biological, radiological, and nuclear threats, as well as other matters related to disaster preparedness and response. The Administration for Strategic Preparedness and Response (ASPR) manages and convenes the NBSB on behalf the Secretary of HHS. The NBSB public meeting will beginning at 11:00 a.m. Eastern time. A detailed agenda and Zoom registration instructions will be available on the ASPR website.

*Procedures for Public Participation:* The link to pre-register for the public meeting will be posted on the meeting website. The online meeting, which use a webinar format, will include American Sign Language interpretation and live captioning.

Members of the public may provide written comments or submit questions at any time via email to *NBSB@hhs.gov.* Additionally, the NBSB invites stakeholders to request up to seven minutes to address the Board in-person during the meeting. The Board wishes to hear from experts from relevant

biomedical, biodefense, or health industries; faculty or researchers at academic institutions; health professionals, health system experts, or those who work in health care consumer organizations; or experts in state, Tribal, territorial, or local government agencies. Requests to provide remarks to the NBSB during the public meeting must be sent to *NBSB@hhs.gov* by March 2, 2023. In that request, please provide the speaker's name, title, position, and organization, with a brief description of the topic that they will address. Requests to speak to the Board will be approved in consultation with the Board Chair and based on time available during the meeting.

**FOR FURTHER INFORMATION CONTACT:** CAPT Christopher Perdue, NBSB Designated Federal Official, (202) 480–7226, *NBSB@hhs.gov.*

**Dawn O'Connell,**

*Assistant Secretary for Preparedness and Response.*

[FR Doc. 2023–01460 Filed 1–24–23; 8:45 am]

**BILLING CODE 4150–37–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Amy F. Petrik, Ph.D., 240–627–3721; *amy.petrik@nih.gov*. Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

**SUPPLEMENTARY INFORMATION:** Technology description follows:

**Antibodies With Potent and Broad Neutralizing Activity Against Antigenically Diverse and Highly Transmissible SARS–CoV–2 Variants**

*Description of Technology:* Emergence of highly transmissible SARS–CoV–2 variants of concern that are resistant to current therapeutic antibodies highlights the need for continuing discovery of broadly reactive antibodies.

Scientists at the Vaccine Research Center of the National Institute of Allergy and Infectious Diseases have identified multiple antibodies that ultra-potently neutralize SARS–CoV–2, including the highly transmissible BA.4, BA.5, BQ.1.1 and XBB subvariants of Omicron, as shown in a pseudovirus neutralization assay. These antibodies target several epitopes in the receptor binding domain of the spike protein that are not impacted by spike mutations that knockout binding to other therapeutic antibodies, including, K417N, N439K, N440K, K444T, V445P, G446S, L452R, Y453F, N460K, S477N, E484A/K, F486S/V and Q498R. Several of the antibodies are able to simultaneously bind to the spike protein and are compatible for use in combination therapies.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

*Potential Commercial Applications:*

- Treatment of SARS–CoV–2 infection

*Competitive Advantages:*

- Ultra-potent neutralization of currently identified SARS–CoV–2 variants including Omicron subvariants BQ.1.1 and XBB
- Mechanism of Action—Some antibodies directly bind to and block ACE2 receptor binding to the SARS–CoV–2 spike protein

*Development Stage:* Preclinical Research.

*Inventors:* John Misasi (VRC, NIAID), Lingshu Wang (VRC, NIAID), John Mascola (VRC, NIAID), Daniel Douek (VRC, NIAID), Nancy Sullivan (VRC, NIAID), Richard Alan Koup (VRC, NIAID), Man Chen, (VRC, NIAID), Wei Shi (VRC, NIAID), Yi Zhang (VRC, NIAID), Eun Sung Yang (VRC, NIAID), Nicole Doria-Rose (VRC, NIAID), Chaim Schramm (VRC, NIAID), Kevina Maria Nabireka Birungi-Huff (VRC, NIAID), Sabrina Bush (VRC, NIAID), Maryam Musayev (VRC, NIAID).

*Publications:* None.

*Intellectual Property:* HHS Reference Number E–024–2023 includes U.S. Provisional Patent Application Number 63/433,719 filed December 19, 2022.

*Licensing Contact:* To license this technology, please contact Amy F. Petrik, Ph.D., 240–627–3721; *amy.petrik@nih.gov.*

Dated: January 19, 2023.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2023–01416 Filed 1–24–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Amy F. Petrik, Ph.D., 240–627–3721; *amy.petrik@nih.gov*. Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

**SUPPLEMENTARY INFORMATION:** Technology description follows: Antibodies with potent and broad neutralizing activity against antigenically diverse and highly transmissible SARS–CoV–2 variants.

Description of Technology:

Emergence of highly transmissible SARS–CoV–2 variants of concern that are resistant to current therapeutic antibodies highlights the need for continuing discovery of broadly reactive antibodies.

Scientists at the Vaccine Research Center of the National Institute of Allergy and Infectious Diseases have engineered a group of human monoclonal antibodies that target epitopes on the receptor binding domain of SARS–CoV–2 spike protein.

These engineered antibodies ultra-potently neutralize >12 variants of SARS–CoV–2, including the highly transmissible BA.4 and BA.5 subvariants of Omicron, as shown in a pseudovirus neutralization assay. These engineered antibodies target 3 distinct epitopes in the receptor binding domain of the spike protein and function by blocking ACE2 binding. These engineered antibodies are not impacted by spike mutations that knockout binding to other therapeutic antibodies, including E484K, N439K, Y453F, L452R and K417N. Several of the engineered antibodies are able to simultaneously bind to the spike protein and are compatible for use in combination therapies. In *in vitro* assays, these combinations were shown to decrease the appearance of escape mutants suggesting the potential to mitigate resistance development when used as combination therapy. Additionally, these engineered antibodies are better suited for manufacturing than the parental antibodies.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications:

- Treatment of SARS–CoV–2 infection

Competitive Advantages:

- Ultra-potent neutralization of currently identified SARS–CoV–2 variants including Omicron subvariants
- Combinations show the potential to mitigate resistance
- Improved manufacturability relative to parental antibodies
- Mechanism of Action—These antibodies bind to block ACE2 receptor binding to the SARS CoV–2 spike protein

*Development Stage:* Preclinical Research.

*Inventors:* John Misasi (VRC, NIAID), Lingshu Wang (VRC, NIAID), John Mascola (VRC, NIAID), Nancy Sullivan (VRC, NIAID), Misook Choe (VRC, NIAID), Richard Alan Koup (VRC, NIAID), Man Chen, (VRC, NIAID), Tongqing Zhou (VRC, NIAID), Peter Kwong (VRC, NIAID), Wei Shi (VRC, NIAID), Yi Zhang (VRC, NIAID), Eun Sung Yang (VRC, NIAID).

*Publications:* None.

*Intellectual Property:* HHS Reference Number E–185–2022 includes U.S. Provisional Patent Application Number 63/404,473 filed September 7, 2022.

*Licensing Contact:* To license this technology, please contact Amy F. Petrik, Ph.D., 240–627–3721; *amy.petrik@nih.gov.*

Dated: January 19, 2023.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2023–01418 Filed 1–24–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

*Date:* February 21–22, 2023.

*Time:* 10:00 a.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:* Zarana Patel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–9295, *zarana.patel@nih.gov*.

*Name of Committee:* Oncology 1—Basic Translational Integrated Review Group; Cancer Genetics Study Section.

*Date:* February 21–22, 2023.

*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:* Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *biesj@mail.nih.gov*.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

*Date:* February 22–23, 2023.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

*Contact Person:* Jordan M. Moore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 451–0293, *jordan.moore@nih.gov*.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

*Date:* February 22, 2023.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, (301) 435–0904, *sara.ahlgren@nih.gov*.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Therapeutic Development and Preclinical Studies Study Section.

*Date:* February 22–23, 2023.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health. Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Richard D. Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov*.

*Name of Committee:* Oncology 1—Basic Translational Integrated Review Group; Tumor Host Interactions Study Section.

*Date:* February 22–23, 2023.

*Time:* 9:30 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710–C, MSC 7806, Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov*.

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

*Date:* February 22–23, 2023.

*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:* Brittany L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A,

Bethesda, MD 20892, (301) 594–3163, *masonmahbl@mail.nih.gov*.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Integrative Myocardial Physiology/Pathophysiology A Study Section.

*Date:* February 22–23, 2023.

*Time:* 10:00 a.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:* Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel; Training in Veterinary and Comparative Medicine.

*Date:* February 22, 2023.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Megan Lynne Goodall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8334, *megan.goodall@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: January 20, 2023.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–01474 Filed 1–24–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Integrative Health; 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 Center for Complementary and Integrative Health Special Emphasis Panel; Fostering Mental, Emotional, and Behavioral (MEB) Health Among Children in School Settings: Opportunities for Multisite Trials of Complementary and Integrative Health Interventions (Clinical Trial Optional).

*Date:* February 17, 2023.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Marta V. Hamity, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, *marta.hamity@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: January 20, 2023.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–01473 Filed 1–24–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; 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 of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

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 Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review B–SEP.

*Date:* April 5–7, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, DEM II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ruixia Zhou, MD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 957, Bethesda, MD 20817, (301) 496–4773, *zhour@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: January 20, 2023.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–01472 Filed 1–24–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2304]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Colorado: | | | | | | |
| Adams | City of Northglenn, (22–08–0178P). | The Honorable Meredith Leighty, Mayor, City of Northglenn, 11701 Community Center Drive, Northglenn, CO 80233. | City Hall, 11701 Community Center Drive, Northglenn, CO 80233. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 31, 2023 | 080257 |
| Adams | City of Thornton (22–08–0178P). | The Honorable Jan Kulmann, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229. | City Hall, 9500 Civic Center Drive, Thornton, CO 80229. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 31, 2023 | 080007 |
| Adams | Unincorporated areas of Adams County (22–08–0178P). | The Honorable Lynn Baca, Chair, Adams County, Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601. | Adams County Community and Economic Development Department, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 31, 2023 | 080001 |
| Connecticut: New Haven. | Town of Branford (22–01–0692P). | The Honorable James B. Cosgrove, First Selectman, Town of Branford Board of Selectmen, 1019 Main Street, Branford, CT 06405. | Engineering Department, 1019 Main Street, Branford, CT 06405. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 14, 2023 | 090073 |
| Florida: | | | | | | |
| Bay | Unincorporated areas of Bay County (21–04–2548P). | The Honorable Robert Carroll, Chair, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401. | Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401. | *https://msc.fema.gov/portal/advanceSearch.* | Feb. 24, 2023 | 120004 |
| Broward | City of Hallandale Beach (22–04–2352P). | The Honorable Joy Cooper, Mayor, City of Hallandale Beach, 400 South Federal Highway, Hallandale Beach, FL 33009. | Public Works Department, 630 Northwest 2nd Street, Hallandale Beach, FL 33009. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 30, 2023 | 125110 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Manatee | Unincorporated areas of Manatee County (22–04–4852P). | Scott Hopes, Manatee County Administrator, 1112 Manatee Avenue, West Bradenton, FL 34205. | Manatee County Building and Development Services Department, 1112 Manatee Avenue, West Bradenton, FL 34205. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 28, 2023 | 120153 |
| Manatee | Unincorporated areas of Manatee County (22–04–5644P). | Scott Hopes, Manatee County Administrator, 1112 Manatee Avenue, West Bradenton, FL 34205. | Manatee County Building and Development Services Department, 1112 Manatee Avenue, West Bradenton, FL 34205. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 21, 2023 | 120153 |
| Miami-Dade | City of Miami (22–04–3431P). | The Honorable Francis Suarez, Mayor, City of Miami, 444 Southwest 2nd Avenue, Miami, FL 33130. | Building Department 444 Southwest 2nd Street, 4th Floor Miami, FL 33130. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 6, 2023 | 120650 |
| Monroe | City of Marathon (22–04–5165P). | The Honorable John Bartus, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050. | Planning Department, 9805 Overseas Highway, Marathon, FL 33050. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 20, 2023 | 120681 |
| Orange | City of Orlando (22–04–4870P). | The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801. | Public Works Department Engineering Division, 400 South Orange Avenue, Orlando, FL 32801. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 7, 2023 | 120186 |
| Sarasota | City of Sarasota (22–04–5287P). | The Honorable Erik Arroyo, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236. | Development Services Department, 1565 1st Street, Room 101, Sarasota, FL 34236. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 29, 2023 | 125150 |
| Maryland: | | | | | | |
| Anne Arundel | Unincorporated areas of Anne Arundel County (22–03–0389P). | Steuart Pittman, Anne Arundel County Executive, 44 Calvert Street, Annapolis, MD 21401. | Anne Arundel County Department of Inspections and Permits, 2664 Riva Road, Annapolis, MD 21401. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 20, 2023 | 240008 |
| Frederick | City of Frederick (22–03–0336P). | The Honorable Michael O'Connor, Mayor, City of Frederick, 101 North Court Street, Frederick, MD 21701. | City Hall, 101 North Court Street, Frederick, MD 21701. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 26, 2023 | 240030 |
| Frederick | Unincorporated areas of Frederick County (22–03–0336P). | The Honorable Jessica Fitzwater, Frederick County Executive, 12 East Church Street, Frederick, MD 21701. | Frederick County Division of Planning and Permitting, 30 North Market Street, Frederick, MD 21701. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 26, 2023 | 240027 |
| Massachusetts: Essex. | City of Gloucester (22–01–0631P). | The Honorable Greg Verga, Mayor, City of Gloucester, 9 Dale Avenue, Gloucester, MA 01930. | City Hall, 3 Pond Road, Gloucester, MA 01930. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 23, 2023 | 250082 |
| Rhode Island: Washington. | Town of Narragansett (22–01–0734P). | James R. Tierney, Manager, Town of Narragansett, 25 5th Avenue, Narragansett, RI 02882. | Narragansett Planning Board, 25 5th Avenue, Narragansett, RI 02882. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 16, 2023 | 445402 |
| South Dakota: Lawrence. | City of Spearfish (22–08–0442P). | The Honorable John Senden, Mayor, City of Spearfish, 625 North 5th Street, Spearfish, SD 57783. | Building and Development Department, 625 North 5th Street, Spearfish, SD 57783. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 22, 2023 | 460046 |
| Texas: | | | | | | |
| Collin and Denton. | Town of Prosper (22–06–0470P). | The Honorable David Bristol, Mayor, Town of Prosper, 250 West 1st Street, Prosper, TX 75078. | Town Hall, 250 West 1st Street, Prosper, TX 75078. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2023 | 480141 |
| Denton | Unincorporated areas of Denton County (22–06–1798P). | The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208. | Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 24, 2023 | 480774 |
| Ellis | City of Venus (22–06–0620P). | The Honorable James L. Burgess, Mayor, City of Venus 700 West U.S. Highway 67, Venus, TX 76084. | Public Works and Water/Sewer Department, 700 West U.S. Highway 67, Venus, TX 76084. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 6, 2023 | 480883 |
| Ellis | City of Waxahachie (22–06–0378P). | The Honorable David Hill, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75168. | Public Works and Engineering Department, 401 South Roger Street, Waxahachie, TX 75165. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 13, 2023 | 480211 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Ellis | City of Waxahachie (22–06–1739P). | The Honorable David Hill, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75168. | Public Works and Engineering Department, 401 South Roger Street, Waxahachie, TX 75165. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 23, 2023 | 480211 |
| Ellis | Unincorporated areas of Ellis County (22–06–0378P). | The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165. | Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 13, 2023 | 480798 |
| Ellis | Unincorporated areas of Ellis County (22–06–0620P). | The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165. | Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 6, 2023 | 480798 |
| Midland | Unincorporated areas of Midland County (22–06–1520P). | The Honorable Terry Johnson, Midland County Judge, 500 North Loraine Street, Suite 1100, Midland, TX 79701. | Midland County Courthouse, 500 North Loraine Street, Midland, TX 79701. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 20, 2023 | 481239 |
| Tarrant | City of Fort Worth (22–06–0836P). | The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 20, 2023 | 480596 |
| Tarrant | Unincorporated areas of Tarrant County (22–06–0836P). | The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196. | Tarrant County Administration Building, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 20, 2023 | 480582 |
| Travis | City of Austin (22–06–1763P). | Spencer Cronk, Manager, City of Austin, P.O. Box 1088, Austin, TX 78767. | Watershed Engineering Division, 505 Barton Springs Road, 12th Floor, Austin, TX 78704. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 6, 2023 | 480624 |
| Virginia: Loudoun. | Unincorporated areas of Loudoun County (22–03–0603P). | Tim Hemstreet, Loudoun County Administrator, 1 Harrison Street, Southeast, 5th Floor, Leesburg, VA 20175. | Loudoun County Government Center, 1 Harrison Street, Southeast, 3rd Floor, MSC #60, Leesburg, VA 20175. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 3, 2023 | 510090 |

[FR Doc. 2023–01422 Filed 1–24–23; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2023–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

**DATES:** The date of June 7, 2023 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.*

| Community | Community map repository address |
|---|---|
| **Hampden County, Massachusetts (All Jurisdictions) Docket No.: FEMA–B–2180** | |
| Town of Brimfield | Building Department, 23 Main Street, Brimfield, MA 01010. |
| Town of Holland | Town Hall, 27 Sturbridge Road, Holland, MA 01521. |
| Town of Wales | Town Hall, 3 Hollow Road, Wales, MA 01081. |
| **Leelanau County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2170** | |
| Charter Township of Elmwood | Elmwood Township Hall, 10090 East Lincoln Road, Traverse City, Michigan 49684. |
| City of Traverse City | Governmental Center, 400 Boardman Avenue, Traverse City, Michigan, 49684. |
| Grand Traverse Band of Ottawa and Chippewa Indians | Grand Traverse Band of Ottawa & Chippewa Indians Tribal Government, 2605 North West Bay Shore Drive, Peshawbestown, Michigan 49682. |
| Township of Bingham | Bingham Township Office, 7171 South Center Highway, Traverse City, Michigan 49684. |
| Township of Centerville | Centerville Township Hall, 5001 South French Road, Cedar, Michigan 49621. |
| Township of Cleveland | Cleveland Township Hall, 955 East Harbor Highway, Maple City, Michigan 49664. |
| Township of Empire | Empire Township Hall, 10088 West Front Street, Empire, Michigan 49630. |
| Township of Glen Arbor | Township Hall, 6394 West Western Avenue, Glen Arbor, Michigan 49636. |
| Township of Leelanau | Leelenau Township Hall, 119 East Naganoba Street, Northport, Michigan 49670. |
| Township of Leland | Leland Township Office, 224 West Main Street, Lake Leelanau, Michigan 49653. |
| Township of Suttons Bay | Township Office, 95 West Fourth Street, Suttons Bay, Michigan 49682. |
| Village of Empire | Village Hall, 11518 South LaCore Street, Empire, Michigan 49630. |
| Village of Northport | Village Office, 116 West Naganoba Street, Northport, Michigan 49670. |
| Village of Suttons Bay | Village Office, 420 North Front Street, Suttons Bay, Michigan 49682. |
| **Hamilton County, Ohio and Incorporated Areas Docket No.: FEMA–B–2168** | |
| City of Blue Ash | City Hall, 4343 Cooper Road, Blue Ash, OH 45242. |
| City of Cincinnati | City Hall, 801 Plum Street, Cincinnati, OH 45202. |
| City of Loveland | City Hall, 120 West Loveland Avenue, Loveland, OH 45140. |
| City of Madeira | City Hall, 7141 Miami Avenue, Madeira, OH 45243. |
| City of Montgomery | City Hall, 10101 Montgomery Road, Montgomery, OH 45242. |
| City of The Village of Indian Hill | Indian Hill Village Hall, 6525 Drake Road, Cincinnati, OH 45243. |
| Unincorporated Areas of Hamilton County | Hamilton County Department of Public Works, 138 East Court Street, Room 800, Cincinnati, OH 45202. |
| Village of Fairfax | Municipal Building, 5903 Hawthorne Avenue, Fairfax, OH 45227. |
| Village of Mariemont | Municipal Building, 6907 Wooster Pike, Mariemont, OH 45227. |
| Village of Newtown | Village Office—Municipal Center, 3537 Church Street, Newtown, OH 45244. |
| Village of Terrace Park | Community Building, 428 Elm Avenue, Terrace Park, OH 45174. |

[FR Doc. 2023–01424 Filed 1–24–23; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2301]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** Comments are to be submitted on or before April 25, 2023.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2301, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.*

| Community | Community map repository address |
|---|---|
| **Marion County, Indiana (All Jurisdictions)<br>Project: 20–05–0016S Preliminary Date: September 30, 2022** | |
| City of Indianapolis | Madison Plaza, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225. |
| Town of Speedway | Municipal Center, 5300 Crawfordsville Road, Speedway, IN 46224. |
| **Le Sueur County, Minnesota and Incorporated Areas<br>Project: 17–05–1791S Preliminary Date: July 14, 2022** | |
| City of Cleveland | City Hall, 205 4th Street, Cleveland, MN 56017. |
| City of Elysian | City Hall, 110 West Main Street, Elysian, MN 56028. |
| City of Heidelberg | City Hall, 31552 181st Avenue, Heidelberg, MN 56071. |
| City of Kasota | Community Center, 200 North Webster Street, Kasota, MN 56050. |
| City of Kilkenny | Fire Department, 156 South Laurel Avenue, Kilkenny, MN 56052. |

| Community | Community map repository address |
|---|---|
| City of Le Sueur | Municipal Building, 203 South 2nd Street, Le Sueur, MN 56058. |
| City of Montgomery | Municipal Building, 201 Ash Avenue Southwest, Montgomery, MN 56069. |
| City of New Prague | City Hall, Planning and Zoning Department, 118 Central Avenue North, New Prague, MN 56071. |
| City of Waterville | City Hall, 200 3rd Street South, Waterville, MN 56096. |
| Unincorporated Areas of Le Sueur County | Le Sueur County Environmental Services Department, 515 South Maple Avenue, Le Center, MN 56057. |

**Monroe County, New York (All Jurisdictions)**
**Project: 20–02–0021S Preliminary Date: September 30, 2022**

| | |
|---|---|
| City of Rochester | City Hall, 30 Church Street, Rochester, NY 14614. |
| Town of Brighton | Brighton Town Hall, 2300 Elmwood Avenue, Rochester, NY 14618. |
| Town of Greece | Town Hall, 1 Vince Tofany Boulevard, Greece, NY 14612. |
| Town of Hamlin | Town Hall, 1658 Lake Road, Hamlin, NY 14464. |
| Town of Irondequoit | Irondequoit Town Hall, 1280 Titus Avenue, Rochester, NY 14617. |
| Town of Parma | Parma Town Hall, 1300 Hilton Parma Corners Road, Hilton, NY 14468. |
| Town of Penfield | Town Hall, 3100 Atlantic Avenue, Penfield, NY 14526. |
| Town of Webster | Town Hall, 1000 Ridge Road, Webster, NY 14580. |

[FR Doc. 2023–01423 Filed 1–24–23; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2023–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

**DATES:** The date of June 21, 2023 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.*

| Community | Community map repository address |
|---|---|

**Worcester County, Massachusetts (All Jurisdictions)**
**Docket No.: FEMA–B–2180**

| | |
|---|---|
| Town of Auburn | Conservation Commission, 104 Central Street, 2nd Floor, Auburn, MA 01501. |
| Town of Charlton | Office of Town Administrator, 37 Main Street, Charlton, MA 01507. |
| Town of Douglas | Town Clerk's Office, 29 Depot Street, Douglas, MA 01516. |
| Town of Dudley | Board of Selectmen's Office, 71 West Main Street, Dudley, MA 01571. |
| Town of Leicester | Town Clerk's Office, 3 Washburn Square, Leicester, MA 01524. |

| Community | Community map repository address |
|---|---|
| Town of Oxford | Town Hall, 325 Main Street, Oxford, MA 01540. |
| Town of Southbridge | Town Clerk's Office, 41 Elm Street, Southbridge, MA 01550. |
| Town of Spencer | Conservation Commission, 157 Main Street, Spencer, MA 01562. |
| Town of Sturbridge | Planning Department, 301 Main Street, Sturbridge, MA 01566. |
| Town of Sutton | Town Hall, 4 Uxbridge Road, Sutton, MA 01590. |
| Town of Webster | Conservation Commission, 350 Main Street, Webster, MA 01570. |
| **Allegan County, Michigan (All Jurisdictions)<br>Docket No.: FEMA–B–2114** | |
| City of Allegan | City Hall, 231 Trowbridge Street, Allegan, MI 49010. |
| City of Fennville | City Hall, 125 South Maple Street, Fennville, MI 49408. |
| City of Holland | City Hall, 270 South River Avenue, Holland, MI 49423. |
| City of Otsego | City Hall, 117 East Orleans Street, Otsego, MI 49078. |
| City of Plainwell | City Hall, 211 North Main Street, Plainwell, MI 49080. |
| City of Saugatuck | City Hall, 102 Butler Street, Saugatuck, MI 49453. |
| City of the Village of Douglas | City Hall, 86 West Center Street, Douglas, MI 49406. |
| City of Wayland | City Hall, 103 South Main Street, Wayland, MI 49348. |
| Township of Allegan | Township Hall, 3037 118th Avenue, Allegan, MI 49010. |
| Township of Casco | Casco Township Hall, 7104 107th Avenue, South Haven, MI 49090. |
| Township of Cheshire | Cheshire Township Hall, 471 41st Street, Allegan, MI 49010. |
| Township of Clyde | Clyde Township Hall, 1679 56th Street, Fennville, MI 49408. |
| Township of Dorr | Township Hall, 4196 18th Street, Dorr, MI 49323. |
| Township of Fillmore | Fillmore Township Hall, 4219 52nd Street, Holland, MI 49423. |
| Township of Ganges | Ganges Township Hall, 1904 64th Street, Fennville, MI 49408. |
| Township of Gun Plain | Gun Plain Township Hall, 381 8th Street, Plainwell, MI 49080. |
| Township of Heath | Heath Township Hall, 3440 M–40, Hamilton, MI 49419. |
| Township of Hopkins | Township Hall, 142 East Main Street, Hopkins, MI 49328. |
| Township of Laketown | Laketown Township Hall, 4338 Beeline Road, Holland, MI 49423. |
| Township of Lee | Lee Township Hall, 877 56th Street, Pullman, MI 49450. |
| Township of Leighton | Leighton Township Hall, 4451 12th Street, Suite A, Wayland, MI 49348. |
| Township of Manlius | Manlius Township Hall, 3134 57th Street, Fennville, MI 49408. |
| Township of Martin | Township Hall, 998 Templeton Street, Martin, MI 49070. |
| Township of Monterey | Monterey Township Hall, 2999 30th Street, Allegan, MI 49010. |
| Township of Otsego | Township Hall, 400 North 16th Street, Otsego, MI 49078. |
| Township of Overisel | Overisel Township Hall, A–4307 144th Avenue, Holland, MI 49423. |
| Township of Salem | Salem Township Hall, 3003 142nd Avenue, Burnips, MI 49314. |
| Township of Saugatuck | Township Hall, 3461 Blue Star Highway, Saugatuck, MI 49453. |
| Township of Trowbridge | Trowbridge Township Hall, 913 M–40 South, Allegan, MI 49010. |
| Township of Valley | Valley Township Hall, 2054 North M–40, Allegan, MI 49010. |
| Township of Watson | Watson Township Hall, 1895 118th Avenue, Allegan, MI 49010. |
| Township of Wayland | Wayland Township Hall, 1060 129th Avenue, Shelbyville, MI 49344. |
| Village of Hopkins | Village Hall, 128 South Franklin Street, Hopkins, MI 49328. |
| **Stafford County, Virginia (All Jurisdictions)<br>Docket Nos.: FEMA–B–2030 and B–2204** | |
| Unincorporated Areas of Stafford County | Stafford County Department of Development Services, 2126 Jefferson Davis Highway, Suite 203, Stafford, Virginia 22554. |

[FR Doc. 2023–01425 Filed 1–24–23; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Intent To Request Extension From OMB of One Current Public Collection of Information: Law Enforcement/ Federal Air Marshal Service Physical and Mental Health Certification

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-Day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0043, abstracted below, that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves forms that applicants and incumbents are required to complete, regarding their physical and mental health history, for the position of Federal Air Marshal (FAM).

**DATES:** Send your comments by March 27, 2023.

**ADDRESSES:** Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227–2062.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 unless it displays a valid OMB control

number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*OMB Control Number 1652–0043; Law Enforcement/Federal Air Marshal Service Physical and Mental Health Certification.* Pursuant to 49 U.S.C. 44917, TSA has authority to deploy Federal Air Marshals (FAMs) on passenger flights and to provide appropriate training, supervision, and equipment of FAMs. Pursuant to this authority, TSA requires that applicants/incumbents for FAM positions meet certain physical and mental health standards.

TSA has established medical guidelines designed to ensure FAMs can safely and effectively perform the tasks essential to the arduous, rigorous, and hazardous functions of the FAM position. The medical guidelines ensure a level of health status and physical and psychological fitness for this public safety law enforcement position which requires a high degree of responsibility. Medical guidelines are based on cognitive, physical, psychomotor, and psychological abilities related to the essential job functions of a FAM.

TSA uses a Practical Exercise Performance Requirements (PEPR) form, and a Treating Physician Status Report (TPSR) form to assist in the determination of physical health standards. These forms may be in conjunction with further evaluation requests as needed. Physical medical examinations include, but are not limited to, cardiac, pulmonary, audiometric, and visual acuity testing. Incumbent FAMs undergo medical examinations every other year until the age 45, and annually thereafter, while in a FAM position. Based on conditions identified during the pre-employment or recurrent periodic examination, the applicant/incumbent employee may be required to provide a completed PEPR form, or TPSR form, signed by a healthcare provider in order to determine if the FAM is medically qualified.

TSA uses a Mental Health Certification (MHC) form to facilitate the determination of applicants' ability to meet established mental health standards and safely and effectively perform the essential functions of the public safety law enforcement position. As part of the psychological assessment, applicants are required to complete the MHC form related to their mental health history. Applicants are asked questions that may be indicative of mental health conditions that may impact the ability to safely and effectively perform the essential functions of the position. All forms submitted by applicants and incumbents are sent directly to the Federal Air Marshal Service Medical Programs Section for initial screening via fax, mail, or in person. Individual responses may require further medical evaluation.

TSA estimates that the total annual burden for this collection is approximately 225 hours and the total annual respondents is 200. TSA estimates 100 health care providers will complete the PEPR forms for 50 applicants and 50 incumbent FAMs and complete the TPSR forms for 50 applicants and 50 incumbent FAMs, totaling 200 forms. TSA estimates it will take approximately 15 minutes (0.25 hours) for the healthcare provider to complete each of the 200 forms, for an annual hour burden of 50 hours. In addition, TSA estimates that the average round-trip travel time for the applicant's visit to the healthcare provider is approximately 1 hour, and the time waiting for the healthcare provider to complete the form is 0.05 hours for an annual hour burden of 75 hours. Finally, TSA assesses that 100 applicants must self-certify certain information regarding their mental health, using the MHC form. TSA estimates it will take 1 hour to complete the MHC form for an annual hour burden of 100 hours.

Dated: January 19, 2023.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Information Technology.*

[FR Doc. 2023–01417 Filed 1–24–23; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[GX23 EN05ESB0500; OMB Control Number 1028–0096]**

### Agency Information Collection Activities; 1028–0096 60-Day Regional Climate Adaptation Science Centers (CASCs)

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before March 27, 2023.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0096 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Doug Beard, Chief of the USGS National Climate Adaptation Science Center, by email at *dbeard@usgs.gov* or by telephone at 571–265–4623.

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The USGS manages nine Regional CASCs. Each CASC is established through a cooperative agreement with a host institution. The host institution agreements are periodically re-competed, requiring collection of information from potential host institutions. In addition, this information collection addresses quarterly and annual reporting required of host institutions.

*Title of Collection:* Department of the Interior Regional Climate Adaptation Science Centers.

*OMB Control Number:* 1028–0096.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Institutions that may propose to serve as CASC host or partner institutions include state, local government, and tribal entities, including academic institutions. Existing host institutions are state academic institutions.

*Total Estimated Number of Annual Respondents:* The USGS expects to request proposals for a maximum of three CASCs in any year and to receive an average of five proposals per CASC request, for a total of fifteen proposals in any single year. The USGS expects to enter into hosting agreements with a minimum of nine CASC host institutions.

*Total Estimated Number of Annual Responses:* 63 Responses.

*Estimated Completion Time per Response:* Each proposal for CASC hosting is expected to take 200 hours to complete. The time required to complete quarterly and annual reports for any specific host cooperative agreement or research project agreement is expected to total 2.5 hours per report.

*Total Estimated Number of Annual Burden Hours:* 3,120 Hours.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* Information will be collected one time every five years (approximately) for each CASC to enable re-competition of CASC hosting agreements. In addition, host institutions are required to fill four quarterly financial statements and one annual progress report.

*Total Estimated Annual Nonhour Burden Cost:* There are no ''non-hour cost'' burdens associated with this collection of information.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

**Jeffrey M. Parrillo,**

*Departmental Information Collections Clearance Officer.*

[FR Doc. 2023–00664 Filed 1–24–23; 8:45 am]

**BILLING CODE 4334–63–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–595]**

### Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of preparation of 2023 Biennial Report and scheduling of a public hearing.

**SUMMARY:** The Commission has begun preparation of its 2023 report required by section 215 of the Caribbean Basin Economic Recovery Act and has scheduled a public hearing for March 9, 2023, in connection with the report. The report will cover trade during calendar years 2021 and 2022, and the Commission will transmit its report to the Congress and the President by September 30, 2023.

*Filing deadlines relating to the hearing:*

*February 23:* Deadline for filing requests to appear

*February 27:* Deadline for filing prehearing briefs and statements

*March 2:* Deadline for filing electronic copies of oral hearing statements

*March 9:* Hearing

*March 16:* Deadline for filing posthearing briefs and statements

*March 28:* Deadline for filing all other written submissions

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions must be submitted electronically and addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission cannot accept paper copies at this time.

**FOR FURTHER INFORMATION CONTACT:** Project Leader Stephanie Fortune-Taylor (202–205–2749 or *stephanie.fortune-taylor@usitc.gov*) or Deputy Project Leader Chang Hong (202–205–2791 or *chang.hong@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact Brian Allen (202–205–3034 or *brian.allen@usitc.gov*) or William Gearhart (202–205–3091 or *william.gearhart@usitc.gov*) of the Commission's Office of the General Counsel. The media should contact Elizabeth Nesbitt, Office of External Relations (202–205–3355 or *elizabeth.nesbitt@usitc.gov*).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* General information concerning the Commission may be obtained by accessing its internet address (*https://www.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.

**SUPPLEMENTARY INFORMATION:**

*Background:* The report is required by section 215 of the Caribbean Economic Recovery Act (19 U.S.C. 2704). The Act requires the Commission to submit to Congress and the President biennial reports, by September 30 of each reporting year, regarding the economic impact of the Act on United States industries and consumers and on the economy of the beneficiary countries

The Commission is required to provide an assessment of the effect, during the period covered by the report, on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with,

articles being imported into the United States from beneficiary countries; and the probable future effect which the Act will have on the United States economy generally, as well as on such domestic industries.

*Public Hearing:* A public hearing in connection with this investigation will be held in-person beginning at 9:30 a.m. on Thursday, March 9, 2023, in the Main Hearing Room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436. The hearing can also be accessed remotely using the WebEx videoconference platform. A link to the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., Thursday, February 23, 2023, in accordance with the requirements in the ''Written Submissions'' section below. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear as a witness via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may at their discretion for good cause shown, grant such requests. Requests to appear as a witness via videoconference due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing.

All prehearing briefs and statements should be filed not later than 5:15 p.m., Monday, February 27, 2023. To facilitate the hearing, including the preparation of an accurate written transcript of the hearing, oral testimony to be presented at the hearing must be submitted to the Commission electronically no later than noon, Thursday March 2, 2023. All post-hearing briefs and statements should be filed no later than 5:15 p.m., Thursday, March 16, 2023. Post-hearing briefs and statements should address matters raised at the hearing. For a description of the different types of written briefs and statements, see the ''Definitions'' section below.

In the event that, as of the close of business on March 2, 2023, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should check the Commission website as indicated two paragraphs above for information concerning whether the hearing will be held.

*Written submissions:* In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., March 28, 2023. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

*Definitions of types of documents that may be filed; Requirements:* In addition to requests to appear at the hearing, this notice provides for the possible filing of four types of documents: prehearing briefs, oral hearing statements, posthearing briefs, and other written submissions.

(1) *Prehearing briefs* refers to written materials relevant to the investigation and submitted in advance of the hearing, and it includes written views on matters that are the subject of the investigation, supporting materials, and any other written materials that you consider will help the Commission in understanding your views. You should file a prehearing brief particularly if you plan to testify at the hearing on behalf of an industry group, company, or other organization, and wish to provide detailed views or information that will support or supplement your testimony.

(2) *Oral hearing statements (testimony)* refers to the actual oral statement that you intend to present at the hearing. Do not include any confidential business information in that statement. If you plan to testify, you must file a copy of your oral statement by the date specified in this notice. This statement will allow Commissioners to understand your position in advance of the hearing and will also assist the court reporter in preparing an accurate transcript of the hearing (*e.g.,* names spelled correctly).

(3) *Posthearing briefs* refers to submissions filed after the hearing by persons who appeared at the hearing. Such briefs: (a) should be limited to matters that arose during the hearing, (b) should respond to any Commissioner and staff questions addressed to you at the hearing, (c) should clarify, amplify, or correct any statements you made at the hearing, and (d) may, at your option, address or rebut statements made by other participants in the hearing.

(4) *Other written submissions* refer to any other written submissions that interested persons wish to make, regardless of whether they appeared at the hearing, and may include new information or updates of information previously provided.

In accordance with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8) the document must identify on its cover (1) the investigation number and title and the type of document filed (*i.e.,* prehearing brief, oral statement of (name), posthearing brief, or written submission), (2) the name and signature of the person filing it, (3) the name of the organization that the submission is filed on behalf of, and (4) whether it contains confidential business information (CBI). If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters of written documents (other than oral hearing statements) are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

*Confidential business information:* Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

All information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes.

The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

*Summaries of written submissions:* Persons wishing to have a summary of their position included in the report should include a summary with their written submission on or before March 28, 2023 and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the report'' at the top of the page. The summary may not exceed 500 words and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the written submission can be found.

By order of the Commission.

Issued: January 20, 2023.

**Katherine Hiner,**

*Acting Secretary to the Commission.*

[FR Doc. 2023–01468 Filed 1–24–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Pick-Up Truck Folding Bed Cover Systems and Components Thereof, DN 3665;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Extang Corporation; Laurmark Enterprises, Inc. d/b/a BAK Industries; and UnderCover, Inc. on January 19, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain pick-up truck folding bed cover systems and components thereof. The complainant names as respondents: 4 Wheel Parts of Compton, CA; American Trucks of Lenexa, KS; Auto Dynasty a/k/a Shun Fung Int'l Inc. of City of Industry, CA; AUTOSTARLAND Technology (US), Inc. of Riverside, CA; DNA Motoring of City of Industry, CA; Fanciest Pickup Accessories of Riverside, CA; Future Trucks a/k/a Future Trading Company, LLC of Houston, TX; Ikon Motorsports, Inc. of City of Industry, CA; Jiaxing Kscar Auto Accessories Co., Ltd. a/k/a KSC Auto of China; Kiko Kikito of China; Lyon Cover Auto a/k/a Truck Tonneau Covers of China; Mamoru Cover a/k/a Ningbo Surpass Auto Parts Co., Ltd. of China; MOSTPLUS Auto of China; Newpowa America, Inc. of Ontario, CA; New Home Materials, Inc. of Riverside, CA; OEDRO of Kent, WA; Pickup Zone a/k/a Dai Qun Feng of Riverside, CA; RDJ Trucks, LLC of Talmo, GA; Smittybilt, Inc. of Compton, CA; Trek Power, Inc. of Placentia, CA; and Wenzhou Tianmao Automobile Parts Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order or, in the alternative, a limited exclusion order, and a cease and desist order upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3665'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing

Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 20, 2023.

**Katherine M. Hiner,**

*Acting Secretary to the Commission.*

[FR Doc. 2023–01469 Filed 1–24–23; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on December 22, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between September 13, 2022 and December 14, 2022 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on September 22, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2022 (87 FR 67489).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01392 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.

Notice is hereby given that, on December 14, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Institute of Electrical and Electronics Engineers, Inc. (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 45 new standards have been initiated and 17 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/nov2022/ https://standards.ieee.org/about/sasb/sba/dec2022/*.

The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed: *https://standards.ieee.org/about/bog/cag/approvals/october2022/*.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on October 5, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2022 (87 FR 67495).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01391 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Undersea Technology Innovation Consortium

Notice is hereby given that, on January 5, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Undersea Technology Innovation Consortium (''UTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Precise Systems, Inc., Lexington Park, MD; Matsys, Inc., Sterling, VA; Real-Time Innovations, Inc., Sunnyvale, CA; Nautilus Cables LLC, Rosenberg, TX; and Hydroacoustics, Inc., Henrietta, NY, have been added as parties to this venture.

Also, Alluvionic, Inc., Melbourne, FL; FGS LLC, La Plata, MD; Shield Ai, Inc., San Diego, CA; Scale Ai, Inc., San Francisco, CA; Polaris Alpha Advanced Systems, Inc., Fredericksburg, VA; NetApp US Public Sector, Inc., Vienna, VA; Hunter Mechanical Design LLC, Marion, MA; Azavea, Inc., Philadelphia, PA; Art Anderson Associates, Inc., Bremerton, WA; and Sertainty Corp., Nashville, TN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UTIC intends to file additional written notifications disclosing all changes in membership.

On October 9, 2018, UTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 2018 (83 FR 55203).

The last notification was filed with the Department on October 5, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 14, 2022 (87 FR 67493).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01383 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destruction

Notice is hereby given that, on January 4, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Countering Weapons of Mass Destruction (''CWMD'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alion Science and Technology Corporation, McLean, VA; DKW Consulting LLC, Tallahassee, FL; Foothold Labs, Inc., Olathe, KS; Global Technology Connection, Inc., Atlanta, GA; Luna Labs USA LLC, Charlottesville, VA; OmniMask LLC, Lafayette, CA; Orion Technology Group LLC, Wilmington, DE; Spectral Sciences, Inc., Burlington, MA; and Systems & Technology Research LLC, Woburn, MA, have been added as parties to this venture.

Also, Applied Technology, Inc., King George, VA; Consolidated Cordage Corporation, Boca Raton, FL; Government Scientific Source, Reston, VA; Hassett and Willis Associates, Inc., Washington, DC; Intellisense Systems, Inc., Torrance, CA; Kyrus Tech, Inc., Sterling, VA; L&C Protec, Inc. dba Cocoon, Inc., North Hampton, NH; Nano Terra, Inc., Cambridge, MA; Phase Sensitive Innovations, Inc., Newark, DE; QUASAR Federal Systems, Inc., San Diego, CA; Rensselaer Polytechnic Institute, Troy, NY; Smart Sensing Solutions, San Pedro, CA; Streamline Automation LLC, Huntsville, AL; Tac-Alert LLC, Austin, TX; and University of Tennessee, Knoxville, TN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on October 6, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 23, 2022 (87 FR 71680).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01372 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rust Foundation

Notice is hereby given that, on December 21, 2022, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Rust Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, OxidOS Automotive SRL, Cluj-Napoca, ROMANIA; and Shopify, Inc., Ontario, CANADA, have been added as parties to this venture.

Also, Tangram Vision, Burlingame, CA; and Wyliodrin SRL, Targu Mures, ROMANIA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rust Foundation intends to file additional written notifications disclosing all changes in membership.

On April 14, 2022, Rust Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on October 3, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 8, 2022 (87 FR 67491).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01374 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Naval Surface Technology Innovation Consortium

Notice is hereby given that, on January 5, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Naval Surface Technology & Innovation Consortium (''NSTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 901D, East Farmingdale, NY; Abbott On Call, Inc., Vienna, VA; Ampersand Solutions Group, Inc., Huntsville, AL; Apptronik, Inc., Austin, TX; Baker Street Scientific, Rome, GA;

Comark, LLC, Milford, MA; Cyan Systems, Santa Barbara, CA; Diversified Technologies, Inc., Bedford, MA; Dynaflow, Inc., Jessup, MD; Federal Equipment Company, Cincinnati, OH; FLIR Surveillance, Inc., N. Billerica, MA; Fox Valley Metal Tech, Inc., Green Bay, WI; Maplewell, Inc., Broomfield, CO; Mercer Engineering and Research Center (MERC), Warner Robins, GA; Munro & Associates, Inc., Auburn Hills, MI; Nanohmics, Inc., Austin, TX; Pacific Science & Engineering Group, Inc., San Diego, CA; PHELPS2020, Inc., Knoxville, TN; Precision, Inc., TT Electronics, Minneapolis, MN; Sauer Compressors USA, Stevensville, MD; SoftIn Way, Inc., Burlington, MA; TrustedQA, Inc., Reston, VA; VALT Enterprizes, Inc., Presque Isle, ME; VoiceIt Technologies, Inc., Minneapolis, MN; and Willerding Acquisition Corp DBA WB Industries, O'Fallon, MO, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSTIC intends to file additional written notifications disclosing all changes in membership.

On October 8, 2019, NSTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 2019 (84 FR 61071).

The last notification was filed with the Department on October 17, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 23, 2022 (87 FR 71677).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01389 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on January 6, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. (''IVI Foundation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Keithley Instruments, Cleveland, OH, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IVI Foundation intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, IVI Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on July 27, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 30, 2022 (87 FR 53007).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01396 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Maritime Sustainment Technology and Innovation Consortium

Notice is hereby given that, on January 5, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Maritime Sustainment Technology and Innovation Consortium (''MSTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Acutronic USA, Inc., Pittsburgh, PA; Corvid Technologies, Moorsesville, NC; Sauer Compressors USA, Stevensville, MD; Swain Online Inc. dba Swain Techs, Newtown, PA; DKW Consulting LLC, Tallahassee, FL; Phelps2020, Inc., Knoxville, TN; SoftInWay, Inc., Burlington, MA; Jo-Kell, Inc., Chesapeake, VA; Custom Magnetics of California Inc., Chino, CA; Espey Mfg. & Electronics Corp., Saratoga Springs, NY; Luna Labs USA, Inc., Charlottesville, VA; NWL, Inc., Bordentown, NJ; Vetted Tech Inc., Syracuse, NY; Weather Gage Technologies, LLC, Annapolis, MD; TrustedQA, Inc., Reston, VA; DL Martin, Mercersburg, PA; Ohio Semitronics, Hilliard, OH; Federal Equipment Company, Cincinnati, OH; Comark LLC, Milford, MA; 901D, Airmont, NY; Fox Valley Metal-Tech, Inc., Green Bay, WI; Chitra Productions, LLC, Virginia Beach, VA; Baker Street Scientific, Inc., Rome, GA; Ohio State University, Columbus, OH; Rebellion Defense, Inc., Washington, DC; Fathom5 Corporation, Austin, TX; McNally Industries, LLC, Grantsburg, WI; IntelliSys Solutions Group, Philadelphia, PA; Virginia Tech Applied Research Corporation, Arlington, VA; Torotel Products, Inc., Olathe, KS; Munro & Associates, Inc., Auburn Hills, MI; Data Networks, Inc., Reston, VA; Qualtech Systems Inc., Rocky Hill, CT; Maplewell, Inc., Broomfield, CO; Project and Construction Welding, Inc. dba IMS, Inc., Cape Coral, FL; Machina Labs, Inc., Chatsworth, CA; and GE Power Conversion USA, Inc., Imperial, PA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSTIC intends to file additional written notifications disclosing all changes in membership.

On October 21, 2020, MSTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 19, 2020 (85 FR 73750).

The last notification was filed with the Department on October 5, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2022 (87 FR 67492).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01390 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on January 4, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), R Consortium, Inc. (''R Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Parexel International Corporation, Waltham, MA, has been added as a party to this venture.

Also, RStudio Inc. has changed its name to Posit Software, PBC, Boston, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on April 23, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2022 (87 FR 29384).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01386 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Subcutaneous Drug Development & Delivery Consortium, Inc.

Notice is hereby given that, on December 21, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Subcutaneous Drug Development & Delivery Consortium, Inc. (''Subcutaneous Drug Development & Delivery Consortium, Inc.'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Biogen Inc., Cambridge, MA; C.H. Boehringer Sohn AG & Co. KG, Ridgefield, CT; Kaléo, Inc., Richmond, VA; KORU Medical Systems, Mahwah, NJ; NEMERA La Verpilliere SAS, La Verpilliere, FRANCE; and Comera Life Sciences, Woburn, MA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Subcutaneous Drug Development & Delivery Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On October 26, 2020, Subcutaneous Drug Development & Delivery Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 3, 2020 (85 FR 78148).

The last notification was filed with the Department on April 25, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2022 (87 FR 29381).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01371 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bytecode Alliance Foundation

Notice is hereby given that, on December 23, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Bytecode Alliance Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Docker, Inc., Palo Alto, CA; and Red Hat, Inc., Raleigh, NC, have been added as parties to this venture.

Also, EDJX, Inc., Raleigh, NC, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Bytecode Alliance Foundation intends to file additional written notifications disclosing all changes in membership.

On April 20, 2022, Bytecode Alliance Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2022 (87 FR 29379).

The last notification was filed with the Department on October 17, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2022 (87 FR 67489).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01370 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on January 4, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical CBRN Defense Consortium (''MCDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Foothold Labs, Inc., Olathe, KS; Luna Labs USA LLC, Charlottesville, VA; Molecular Technologies Laboratories LLC, Galena, OH; NUES, Inc., Silver Spring, MD; Schrodinger LLC, Portland, OR; and Sonogen Medical, Inc., Chevy Chase, MD, have been added as parties to this venture.

Also, DC Photonics LLC, Dallas, TX; and Hermtac LLC, Dallas, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on October 6, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2022 (87 FR 67490).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01394 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on January 5, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nanjing Decowell Automation Co., Ltd., Nanjing, PEOPLE'S REPUBLIC OF CHINA; HollySys Technology Group Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Tool-Temp AG, Sulgen, SWITZERLAND; VEGA Grieshaber KG, Schiltach, GERMANY; Magswitch Automation Company, Superior, CO; Control Concepts Inc., Chanhassen, MN; and Shanghai Flexem Technology Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, MTT Corporation, Tokyo, JAPAN, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on October 17, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2022 (87 FR 67490).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01393 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on January 11, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Warfare Research Project Consortium (''IWRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Adaptive Dynamics, Inc., San Diego, CA; Altagrove LLC, Herndon, VA; Continental Electronics Corp., Dallas, TX; Cubic Digital Intelligence, Inc., Ashburn, VA; Cyber DI LLC, Great Falls, VA; CyOne, Inc., Aberdeen, MA; DISH Wireless LLC, Englewood, CO; East Stout Corp., Washington, DC; Enveil, Inc., Fulton, MD; Integration Innovation, Inc., Huntsville, AL; Kratos RT Logic, Inc., Colorado Springs, CO; NIC4, Inc., Tampa, FL; North Dakota State University, Fargo, ND; Phelps2020, Inc., Knoxville, TN; R–DEX Systems, Inc., Woodstock, GA; SDA Solutions LLC, Triangle, VA; Snowbird Agility, Inc. Frederick, MD; Tangram Flex, Inc., Dayton, OH; United Federal Systems, Inc., Manassas, VA; University of Maine System, Orono, ME; VoiceIt Technologies, Inc., Minneapolis, MN have been added as parties to this venture.

Also, Aarna Networks, Inc., San, Jose, CA; Aegis Power Systems, Inc., Muprhy, NC; Ansys, Inc., Canonsburg, PA; Black Cape, Inc., Arlington, VA; BlackHorse Solutions, Inc., Herndon, VA; Burke Consortium, Inc., Alexandria, VA; Certus Core LLC, Tampa, FL; Chenega Decision Sciences LLC, Anchorage, AK; Cognovi Government Services, Dayton, OH; Cohere Solutions LLC, Reston, VA; DataHouse USA, Inc., Honolulu, HI; DataSource, Inc., McLean, VA; Datron World Communications, Inc., Vista, CA; Decision Lens, Inc., Arlington, VA; Dutch Ridge Consulting Group, Beaver, PA; Emagine IT, Fairfax, VA; Everactive, Inc., Santa Clara, CA; FUTURA Cyber, Inc., Dedham, MA; Halfaker and Associates LLC, Arlington, VA; Hegarty Research LLC, McLean, VA; High Tide Technology LLC, North Charleston, SC; II–VI Aerospace & Defense, Inc., Murrieta, CA; Improbable LLC, Arlington, VA; Intelligent Automation, Inc., Rockville, MD; Interloc Solutions, Inc., Seattle, WA; KeyLogic Systems LLC, Morgantown, WV; Management Services Group, Inc. dba Global Technical Systems, Virginia Beach, VA; Micro USA, Inc., Poway, CA; NanoVMs, Inc., San Francisco, CA; Pathfinder Wireless Corp., Seattle, WA; PGFM Solutions LLC, Philadelphia, PA Pinnacle Consulting Team LLC, Bridgeton, MO; Research Innovations, Inc., Alexandria, VA; RMA Associates, Arlington, VA; Scalable Network Technologies, Inc., Culver City, CA; ServiceNow, Inc., Santa Clara, CA; Technical Systems Integration, Inc., Chesapeake, VA; TurbineOne LLC, San Francisco, CA; Wind River Systems, Inc., Alameda, CA; Wind Talker Innovations, Inc., Fife, WA; Wyle Laboratories, Inc., Lexington Park, MD have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on October 14, 2022. A notice was published in the **Federal**

**Register** pursuant to Section 6(b) of the Act on November 8, 2022 (87 FR 67493).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01399 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—AI Infrastructure Alliance, Inc.

Notice is hereby given that, on January 4, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AI Infrastructure Alliance, Inc. (''AIIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Run:ai, Tel Aviv, ISRAEL, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIIA intends to file additional written notifications disclosing all changes in membership.

On January 5, 2022, AIIA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2022 (87 FR 13759).

The last notification was filed with the Department on August 19, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 15, 2022 (87 FR 56704).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01375 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2018–P10, ''Facilitating Proactive Sewer Inspections at Petrochemical Sites''

Notice is hereby given that, on May 6, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'' Project No. 2018–P10, entitled ''Facilitating Proactive Sewer Inspections at Petrochemical Sites'' (''PERF Project No. 2018–P10'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ExxonMobil Technology and Engineering Company, Spring, TX; BP Products North America, Inc., Naperville, IL; Shell Global Solutions (US) Inc., Houston, TX; and TotalEnergies E&P Research & Technology USA, LLC, Houston, TX.

The general area of the PERF Project No. 2018–P10's planned activity are, through cooperative research efforts, to explore cost-effective sewer inspection technologies and develop guidance for refining and petrochemical facilities to assess sewer integrity to help facilities identify technologies that can inspect sewers online, provide early detection of sewer integrity issues, prevent sewer failures, and minimize unplanned maintenance events.

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01404 Filed 1–24–23; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Cooperative Research Group on Hedge V

Notice is hereby given that, on January 4, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group on HEDGE V (''HEDGE V'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Robert Bosch LLC, Farmington Hills, MI, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE V intends to file additional written notifications disclosing all changes in membership.

On June 18, 2021, HEDGE V filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2021 (86 FR 45750).

The last notification was filed with the Department on July 14, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 1, 2022 (87 FR 47004).

**Suzanne Morris,**

*Deputy Director of Civil Enforcement Operations, Antitrust Division.*

[FR Doc. 2023–01387 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[NOTICE: (23–003)]**

### Name of Information Collection: NASA Software Release System

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal

agencies to take this opportunity to comment on proposed and/or continuing information collections.

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or *b.edwards-bodmer@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

NASA Software Release Request System (SRS) is a workflow tool that allows Agency Software Release Authorities (SRAs) to easily develop and route software release documents, such as the Software Release Request Authorization (SRRA) and Section 508 Compliance Matrix in an automated fashion. SRAs have the added ability to perform parallel routing, including the use of time-based email reminders, tracking and reporting progress on the processing of the software release requests so they can effectively manage this process at their respective centers. Software owners/developers can submit the Software Release Requests or view their submitted Software Release Requests that may need their attention.

### II. Methods of Collection

Web Based—only accessible via NASA's internal network (e.g., on site or remotely via a NASA issued VPN).

### III. Data

*Title:* NASA Software Release System.

*OMB Number:* 2700–0175.

*Type of Review:* Information Collection Renewal.

*Affected Public:* NASA Funded Contractors and Government Employees.

*Average Expected Annual Number of Activities:* On average 94 software packages are released per year.

*Average Number of Respondents per Activity:* At least one respondent will complete the form per activity (software release) which will result in approximately 94 respondents.

*Annual Responses:* 94.

*Frequency of Responses:* As needed.

*Average Minutes per Response:* 240 minutes.

*Burden Hours:* 504.

### IV. Request for Comments

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Cheryl Parker,**

*Federal Register Liaison Officer.*

[FR Doc. 2023–01444 Filed 1–24–23; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Proposed Collections

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice and request for comment.

**SUMMARY:** The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extensions of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments should be received on or before March 27, 2023 to be assured consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on the information collection to Nina DiPadova, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov.*

**FOR FURTHER INFORMATION CONTACT:** Address requests for additional information to Nina DiPadova at the address above or telephone 703–718–1155.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* 3133–0024.

*Title:* Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status, 12 CFR part 708b.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Part 708b of NCUA's rules sets forth the procedural and disclosure requirements for mergers of federally-insured credit unions, conversions from federal share insurance to nonfederal insurance, and federal share insurance terminations. Part 708b is designed to ensure NCUA has sufficient information whether to approve a proposed merger, share insurance conversion, or share insurance termination. It further ensures that members of credit unions have sufficient and accurate information to exercise their vote properly concerning a proposed merger, insurance conversion, or insurance termination. The rule also protects the property interests of members who may lose their federal share insurance due to a merger, share insurance conversion, or share insurance termination.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated No. of Respondents:* 160 Mergers; 4 Share Insurance Conversions; 1 Share Insurance Terminations.

*Estimated No. of Responses per Respondent:* 7 for Mergers, 5 for Share Insurance Conversions, and 5 for Share Insurance Terminations.

*Estimated Total Annual Responses:* 1,120 for Mergers, 20 for Share Insurance Conversions, and 5 for Share Insurance Terminations.

*Estimated Burden Hours per Response:* 35 Burden Hours for Mergers, 15 Burden Hours for Share Insurance Conversions; 2.4 Burden Hours for Share Insurance Terminations.

*Estimated Total Annual Burden Hours:* 5,600.

*OMB Number:* 3133–0163.

*Title:* Privacy of Consumer Financial Information Recordkeeping and Disclosure Requirements. Under the Gramm-Leach-Bliley Act and Regulation P, 12 CFR 1016.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Regulation P (12 CFR 1016) requires credit unions to disclose its privacy policies to customers as well as offer customers a reasonable opportunity to opt out—in whole or in part—of those policies to further restrict the release of their personal financial information to nonaffiliated third parties. Credit unions are required to

provide an initial privacy notice to customers that is clear and conspicuous, an annual notice of the privacy policies and practices of the institution, a revised notice to customers if triggered by specific changes to the existing policy, and a notice of the right of the customer to opt out of the institution's information sharing practices. Consumers who choose to exercise their opt-out right document this choice by returning an opt-out form or other permissible method.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated No. of Respondents:* 2,654 FICU; 1,360,000 members who opt-out.

*Estimated No. of Responses per Respondent:* Annual for most FICUs. Once for credit union members choosing to opt-out.

*Estimated Total Annual Responses:* 1,365,319.

*Estimated Burden Hours per Response:* FICUs, 8.11; Consumers, 0.28.

*Estimated Total Annual Burden Hours:* 426,248.

*OMB Number:* 3133–0181.

*Type of Review:* Extension of currently approved collection.

*Title:* Registration of Mortgage Loan Originators.

*Abstract:* The Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), *12 U.S.C. 5101 et seq.,* as codified by *12 CFR part 1007,* requires an employee of a bank, savings association, or credit union or a subsidiary regulated by a Federal banking agency or an employee of an institution regulated by the Farm Credit Administration (FCA), (collectively, Agency-regulated Institutions) who engages in the business of a residential mortgage loan originator (MLO) to register with the Nationwide Mortgage Licensing System and Registry (Registry) and obtain a unique identifier. Agency-regulated institutions must also adopt and follow written policies and procedures to assure compliance with the S.A.F.E. Act. The Registry is intended to aggregate and improve the flow of information to and between regulators; provide increased accountability and tracking of mortgage loan originators; enhance consumer protections; reduce fraud in the residential mortgage loan origination process; and provide consumers with easily accessible information at no charge regarding the employment history of, and the publicly adjudicated disciplinary and enforcement actions against MLOs.

*Affected Public:* Private Sector: Not-for-profit institutions; Individuals or households.

*Estimated No. of Respondents:* 70,795.

*Estimated No. of Responses per Respondent:* 2.21.

*Estimated Total Annual Responses:* 165,844.

*Estimated Hours per Response:* 0.40 per individual; 6.38 per institution.

*Estimated Total Annual Burden Hours:* 87,260.

*Reason for Change:* The number of respondents have been updated to reflect current data reported by the Registry and the NCUA call report.

*OMB Number:* 3133–0187.

*Type of Review:* Extension currently approved collection.

*Title:* Reverse Mortgage Products—Guidance for Managing Reputation Risks, 12 CFR 1002, 1005, 1013, and 229.

*Abstract:* The Reverse Mortgage Guidance sets forth standards intended to ensure that financial institutions effectively assess and manage the compliance and reputation risks associated with reverse mortgage products. The information collection will allow NCUA to evaluate the adequacy of a federally-insured credit union's internal policies and procedures as they relate to reverse mortgage products.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated No. of Respondents:* 17.

*Estimated No. of Responses per Respondent:* 1.05.

*Estimated Total Annual Responses:* 18.

*Estimated Hours per Response:* 9.78.

*Estimated Total Annual Burden Hours:* 176.

*Request for Comments:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on January 19, 2023.

Dated: January 19, 2023.

**Nina E. DiPadova,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2023–01476 Filed 1–24–23; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### 30-Day Notice for the "Application for International Indemnification"; Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, will submit the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for International Indemnification. Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.reginfo.gov.*

**DATES:** Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''National Endowment for the Arts'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, comments can be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- 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 the electronic submissions of responses.

*Agency:* National Endowment for the Arts.

*Title:* Application for International Indemnification.

*OMB Number:* 3135–0094.

*Frequency:* Renewed every three years.

*Affected Public:* Nonprofit, tax exempt organizations, and governmental units.

*Estimated Number of Respondents:* 40 per year.

*Estimated Time per Respondent:* 45 hours.

*Estimated Cost per Respondent:* $2,097.

*Total Burden Hours:* 1,800 hours.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* $163,888.

*Description:* This application form is used by nonprofit, tax-exempt organizations (primarily museums), and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from lenders abroad for exhibition in the United States, from within the United States when the foreign works of art are integral to the exhibition, or sent from the United States for exhibition abroad. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council on the Arts and the Humanities certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR 1160.4.

Dated: January 19, 2023.

**Bonita Smith,**

*Director, Office of Administrative Services and Contracts, National Endowment for the Arts.*

[FR Doc. 2023–01432 Filed 1–24–23; 8:45 am]

**BILLING CODE 7537–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### 30-Day Notice for the ''Application for Domestic Indemnification''; Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, will submit the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Domestic Indemnification. Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.reginfo.gov*.

**DATES:** Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''National Endowment for the Arts'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, comments can be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- 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 the electronic submissions of responses.

*Agency:* National Endowment for the Arts.

*Title:* Application for Domestic Indemnification.

*OMB Number:* 3135–0123.

*Frequency:* Renewed every three years.

*Affected Public:* Nonprofit, tax exempt organizations, and governmental units.

*Estimated Number of Respondents:* 18 per year.

*Estimated Time per Respondent:* 40 hours.

*Estimated Cost per Respondent:* $2,097.

*Total Burden Hours:* 720 hours.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* $163,888.

*Description:* This application form is used by nonprofit, tax-exempt organizations (primarily museums), and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from lenders in the United States for exhibition in United States. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council on the Arts and the Humanities certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR 1160.4.

Dated: January 19, 2023.

**Bonita Smith,**

*Director, Office of Administrative Services and Contracts, National Endowment for the Arts.*

[FR Doc. 2023–01431 Filed 1–24–23; 8:45 am]

**BILLING CODE 7537–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, February 16, 2023. There will be no in-person gathering for this meeting.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2020 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

**DATES:** The virtual meeting will be held on February 16, 2023, beginning at 10:00 a.m. (ET).

**ADDRESSES:** The meeting will convene virtually.

**FOR FURTHER INFORMATION CONTACT:** Ana Paunoiu, 202–606–2858, or email *pay-leave-policy@opm.gov.*

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines.

*Meeting Agenda.* The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area

*Public Participation:* The February 16, 2023, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''February 16 FPRAC Meeting'' no later than Tuesday, February 14, 2023.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by February 14, 2023.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

**Stephen Hickman,**

*Federal Register Liaison.*

[FR Doc. 2023–01457 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2023–109 and CP2023–110]**

### 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:* January 27, 2023.

**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**

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)

[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).

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).:* MC2023–109 and CP2023–110; *Filing Title:* USPS Request to Add Parcel Select Contract 59 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 20, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* January 27, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2023–01445 Filed 1–24–23; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–96717; File No. SR–NYSEAMER–2023–07]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule

January 19, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 12, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE American Options Fee Schedule (the ''Fee Schedule'') with respect to certain regulatory fees related to the Central Registration Depository (''CRD'' or ''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee change on January 12, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule with respect to certain regulatory fees collected by FINRA for use of CRD.[4] The Exchange proposes to implement the fee changes effective January 12, 2023.[5]

FINRA collects and retains certain regulatory fees via CRD for the registration of associated persons of Exchange ATP Holders that are not FINRA members (''Non-FINRA ATP Holders'').[6] CRD fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA ATP Holders.

FINRA recently amended two of the fees assessed for use of the CRD system.[7] Accordingly, the Exchange proposes to amend the Fee Schedule to mirror the fees assessed by FINRA, which will be implemented concurrently with the amended FINRA fee as of January 2023.[8] Specifically, the Exchange proposes to amend the Fee Schedule to modify the fee charged to Non-FINRA ATP Holders for additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings from $110 to $155[9] and the fee for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints, from $15 to $20.[10]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees, and the Exchange is not aware of any problems that ATP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4)[12] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade, to foster cooperation and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

[5] The Exchange originally filed to amend the Price List on January 3, 2023 (SR–NYSEAmer–2023–02). On January 12, 2023, SR–NYSEAmer–2023–02 was withdrawn and replaced by this filing.

[6] The Exchange originally adopted fees for use of the CRD system in 2003 and amended those fees in 2013 and 2022. *See* Securities Exchange Act Release No. 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003) (SR–Amex–2003–49); Securities Exchange Act Release No. 68589 (January 4, 2013), 78 FR 2465 (January 11, 2013) (SR–NYSEMKT–2012–89); Securities Exchange Act Release No. 93901 (January 5, 2022), 87 FR 1453 (January 11, 2022) (SR–NYSEAmer–2021–48). While the Exchange lists these fees in its Fee Schedule, it does not collect or retain these fees.

[7] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032).

[8] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA ATP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE American-only ATP Holders. Non-FINRA ATP Holders have been charged CRD system fees since 2003. *See* note 5, *supra.* ATP Holders that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

[9] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws.

[10] *See* Section (4)(b)(4) of Schedule A to the FINRA By-laws.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fee change is reasonable because the fee will be identical to that adopted by FINRA as of January 2023 for use of the CRD system to submit an initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings and the posting to CRD each set of fingerprints submitted electronically to FINRA. The costs of operating and improving the CRD system are similarly borne by FINRA when a Non-FINRA ATP Holder uses the CRD system; accordingly, the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed to FINRA members. In addition, as FINRA noted in amending its fees, it believes that its proposed pricing structure is reasonable and correlates fees with the components that drive its regulatory costs to the extent feasible. The Exchange further believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA ATP Holders. All similarly situated ATP Holders are subject to the same fee structure, and every ATP Holder must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange.

The Exchange also believes that the proposed fee change provides for the equitable allocation of reasonable fees and other charges, and does not unfairly discriminate between customers, issuers, brokers, and dealers. The fee applies equally to all individuals and firms required to report information the CRD system, and the proposed change will result in the same regulatory fees being charged to all ATP Holders required to report information to CRD and for services performed by FINRA regardless of whether such ATP Holders are FINRA members. Accordingly, the Exchange believes that the fee collected for such use should increase in lockstep with the fee adopted by FINRA as of January 2023, as is proposed by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed change will reflect fees that will be assessed by FINRA as of January 2023 and will thus result in the same regulatory fees being charged to all ATP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ATP Holders are FINRA members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[15] of the Act and subparagraph (f)(2) of Rule 19b–4[16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such 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 under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2023–07 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–NYSEAMER–2023–07. 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–NYSEAMER–2023–07, and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01402 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *See* 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–96715; File No. SR–NYSEAMER–2023–05]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31E(i)(2)

January 19, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 12, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31E(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 7.31E(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. Specifically, the Exchange proposes to allow ETP Holders the option to apply STP modifiers to orders submitted not only from the same MPID, as the current rule provides, but also to orders submitted from (i) the same subidentifier of a particular MPID; (ii) other MPIDs associated with the same Client ID (as designated by the ETP Holder); and (iii) Affiliates of the ETP Holder.

Background

Currently, Rule 7.31E(i)(2) offers optional anti-internalization functionality to ETP Holders in the form of STP modifiers that enable an ETP Holder to prevent two of its orders from executing against each other. Currently, ETP Holders can set the STP modifier to apply at the market participant identifier (''MPID'') level. The STP modifier on the order with the most recent time stamp controls the interaction between two orders marked with STP modifiers. STP functionality assists market participants by allowing firms to better prevent unintended executions with themselves and to reduce the potential for ''wash sales'' that may occur as a result of the velocity of trading in a high-speed marketplace. STP functionality also assists market participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange notes that several equities exchanges—including IEX, Nasdaq, Nasdaq BX, Nasdaq Phlx, and MIAX Pearl Equities—have all recently amended their rules to provide additional levels at which orders may be grouped for the purposes of applying their anti-internalization rules. As such, the proposed changes herein are not novel and are familiar to market participants.[4]

Proposed Amendment

The Exchange proposes to amend the Rule 7.31E(i)(2) in three ways, each of which would enhance ETP Holders' flexibility over the levels at which orders may be grouped for the purposes of applying the Exchange's existing STP modifiers.

First, the Exchange proposes to amend the rule to permit an ETP Holder to set the STP modifiers to apply at the level of a subidentifier of an MPID. This change would allow ETP Holders to prevent orders sent from the same subidentifier of a particular MPID from executing against each other, but permit orders sent from different subidentifiers of the same MPID to interact.[5]

Second, the Exchange proposes to amend Rule 7.31E(i)(2) to permit an ETP Holder to set the STP modifiers to prevent orders from different MPIDs from executing against each other. The proposed amendment would address this by allowing ETP Holders to apply STP modifiers at the level of ''Client ID,'' which would be an identifier designated by the ETP Holder. As proposed, a Client ID would function similarly to an MPID in that it would be a unique identifier assigned to an ETP Holder. The Exchange believes that this proposed enhancement would provide ETP Holders with greater flexibility in how they instruct the Exchange to apply STP modifiers to their orders. The Exchange notes that it is not novel for an exchange to provide its members with multiple methods by which to designate anti-internalization instructions.[6]

Third, the Exchange proposes to amend Rule 7.31E(i)(2) to permit ETP Holders to direct orders not to execute against orders entered across MPIDs associated with Affiliates of the ETP Holder that are also ETP Holders.[7] This change would expand the availability of the STP functionality to ETP Holders that have divided their business activities between separate corporate entities without disadvantaging them when compared to ETP Holders that

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Several other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality. *See, e.g.,* Securities Exchange Act Release Nos. 96187 (October 31, 2022), 87 FR 66764 (November 4, 2022) (SR–IEX–2022–08); 96156 (October 25, 2022), 87 FR 65633 (October 31, 2022) (SR–BX–2022–020); 96154 (October 25, 2022), 87 FR 65631 (October 31, 2022) (SR-Phlx-2022–43); 96069 (October 13, 2022), 87 FR 63558 (October 19, 2022) (SR–NASDAQ–2022–56, implemented by SR–NASSDAQ–2022–60); and 96334 (November 16, 2022), 87 FR 71368 (November 22, 2022) (SR–PEARL–2022–48).

[5] This functionality exists on the Exchange's affiliate exchange Arca Options, and as such is not novel and is familiar to market participants. *See* Arca Options Rule 6.62P–O(i)(2) (''An Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in this paragraph will be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier from the same MPID, and, if specified, any subidentifier of that MPID.'').

[6] *See, e.g.,* MIAX Pearl, LLC (''MIAX Pearl Equities'') Rule 2614(f) (specifying that Self-Trade Prevention Modifiers will be applicable to orders ''from the same MPID, Exchange member identifier, trading group identifier, or Equity Member Affiliate (any such identifier, a 'Unique Identifier')'').

[7] The proposed definition of ''Affiliate'' is identical to the one currently provided in the Exchange's Price List. *See* Price List, ''General'' section II(c) (''For purposes of this Fee Schedule, the term ''affiliate'' shall mean any [ETP Holder] under 75% common ownership or control of that [ETP Holder].''). This 75% threshold is not novel. *See, e.g.,* Nasdaq PHLX LLC (''Nasdaq PHLX'') Equity 4, Rule 3307(c)

operate their business activities within a single corporate entity.

The Exchange believes that these enhancements will all provide helpful flexibility for ETP Holders by expanding their ability to apply STP modifiers at multiple levels, including within a subidentifier of a single MPID, across multiple MPIDs of the same Client ID, and across multiple MPIDs of the ETP Holder and its Affiliates, in addition to at the MPID level as the current rule provides. These proposed changes would help ETP Holders better manage their order flow and prevent undesirable executions or the potential for ''wash sales'' that might otherwise occur.

To effect these changes, the Exchange proposes to amend the first sentence of Rule 7.31E(i)(2) and add a new sentence as follows (proposed text underlined, deletions in brackets): ''Any incoming order to buy (sell) designated with an STP modifier will be prevented from trading with a resting order to sell (buy) also designated with an STP modifier and from *the same Client ID;* the same MPID *and, if specified, any subidentifier; or an Affiliate identifier (any such identifier, a ''Unique Identifier''). For purposes of this rule, the term ''Affiliate'' means any ETP Holder under 75% common ownership or control of that ETP Holder.*'' The Exchange further proposes to replace references to ''MPID'' in Rules 7.31E(i)(2)(A)–(D) with the term ''Unique Identifier.''

While this proposal would expand how an ETP Holder can designate orders with an STP modifier, nothing in this proposal would make substantive changes to the STP modifiers themselves or how they would function with respect to two orders interacting within a relevant level.

The Exchange notes that, as with its current anti-internalization functionality, use of the proposed revised Rule 7.31E(i)(2) will not alleviate or otherwise exempt ETP Holders from their best execution obligations. As such, ETP Holders using the proposed enhanced STP functionality will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization.

Timing and Implementation

The Exchange anticipates that the technology changes required to implement this proposed rule change will become available on a rolling basis, beginning less than 30 days from the date of filing, to be completed by the end of the first quarter of 2023.

2. Statutory Basis

The Exchange believes that the 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, because 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system and is consistent with the protection of investors and the public interest because enhancing how ETP Holders may apply STP modifiers will provide ETP Holders with additional flexibility with respect to how they implement self-trade protections provided by the Exchange that may better support their trading strategies.

The Exchange believes that the proposed rule change does not unfairly discriminate among ETP Holders because the proposed STP protections will be available to all ETP Holders, and ETP Holders that prefer setting STP modifiers at the MPID level will still be able to do so. In addition, allowing ETP Holders to apply STP modifiers to trades submitted by their Affiliates that are also ETP Holders is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity.

Finally, the Exchange notes that other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality and similarly use a 75% threshold of common ownership for assessing whether such orders would be eligible for this enhancement.[10] Consequently, the Exchange does not believe that this change raises new or novel issues not already considered by the Commission.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance the Exchange's competitiveness by providing additional flexibility over the levels at which orders may be grouped for STP purposes, thereby incentivizing ETP Holders to send orders to the Exchange and increase the liquidity available on the Exchange. The Exchange also notes that the proposed new STP grouping options, like the Exchange's current anti-internalization functionality, are completely optional and ETP Holders can determine whether to apply anti-internalization protections to orders submitted to the Exchange, and if so, at what level to apply those protections (*e.g.,* MPID, subidentifier, Client ID, or Affiliate level). The proposed rule change would also improve the Exchange's ability to compete with other exchanges that recently amended their rules to expand the groupings for their own anti-internalization functionality. There is no barrier to other national securities exchanges adopting similar anti-internalization groupings as those proposed herein.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* notes 4 and 7.

[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

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would enable the Exchange to compete with other exchanges that have recently amended their rules to expand the levels at which orders may be grouped for STP purposes. The Exchange states that at least one such competitor exchange plans to introduce similar capabilities to market participants as early as January 9, 2023. The Exchange also states that it is currently working on technological solutions to meet this competition and to make similar offerings available to market participants as soon as possible. The Exchange expects to begin rolling out this functionality in less than 30 days from the date of filing, and thus requests waiver of the operative delay in order to promptly meet market competition. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[15]

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.

the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

## 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–NYSEAMER–2023–05 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–NYSEAMER–2023–05. 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–NYSEAMER–2023–05 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01409 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 34812; 812–15409]**

## GuideStone Funds and GuideStone Capital Management, LLC

January 19, 2023.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(c) of the Act.

**SUMMARY OF APPLICATION:** The requested exemption would permit a Trust's board of trustees to approve new sub-advisory agreements and material amendments to existing sub- advisory agreements without complying with the in-person meeting requirement of Section 15(c) of the Act.

**APPLICANT:** GuideStone Funds (the ''Trust'') and GuideStone Capital Management, LLC.

**FILING DATES:** The application was filed on November 17, 2022, and amended on December 23, 2022, and December 30, 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 relevant applicant 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 February 13, 2023, 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.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: Matthew Wolfe, Esq., *matt.wolfe@GuideStone.org* and Alison Fuller, Esq., *afuller@stradley.com.*

**FOR FURTHER INFORMATION CONTACT:** Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and condition, please refer to Applicants' (second) amended and restated application, dated (December 30, 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.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01398 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–492, OMB Control No. 3235–0549]**

### Submission for OMB Review; Comment Request; Extension: Rule 155.EXT

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 155 (17 CFR 230.155) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides safe harbors for a registered offering of securities following an abandoned private offering, or a private offering following an abandoned a registered offering, without integrating the registered and private offerings in either case. In connection with registered offering following an abandoned private offering, Rule 155 requires an issuer to include in any prospectus filed as a part of a registration statement disclosure regarding the abandoned private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) information concerning the withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. All information submitted to the Commission is available to the public for review. Companies only need to satisfy the Rule 155 information requirements if they wish to take advantage of the rule's safe harbors. The Rule 155 information is required only on occasion. We estimate Rule 155 takes approximately 4 hours per response to prepare and is filed by 600 respondents annually. We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the filer for a total annual reporting burden of 1,200 hours (2 hours per response × 600 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by February 24, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 19, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01428 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–96716; File No. SR–NYSEARCA–2023–07]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31–E(i)(2)

January 19, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 12, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31–E(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 7.31–E(i)(2) to enhance the Exchange's existing Self Trade

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Prevention (''STP'') modifiers. Specifically, the Exchange proposes to allow ETP Holders the option to apply STP modifiers to orders submitted not only from the same MPID, as the current rule provides, but also to orders submitted from (i) the same subidentifier of a particular MPID; (ii) other MPIDs associated with the same Client ID (as designated by the ETP Holder); and (iii) Affiliates of the ETP Holder.

Background

Currently, Rule 7.31–E(i)(2) offers optional anti-internalization functionality to ETP Holders in the form of STP modifiers that enable an ETP Holder to prevent two of its orders from executing against each other. Currently, ETP Holders can set the STP modifier to apply at the market participant identifier (''MPID'') level. The STP modifier on the order with the most recent time stamp controls the interaction between two orders marked with STP modifiers. STP functionality assists market participants by allowing firms to better prevent unintended executions with themselves and to reduce the potential for ''wash sales'' that may occur as a result of the velocity of trading in a high-speed marketplace. STP functionality also assists market participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange notes that several equities exchanges—including IEX, Nasdaq, Nasdaq BX, Nasdaq Phlx, and MIAX Pearl Equities—have all recently amended their rules to provide additional levels at which orders may be grouped for the purposes of applying their anti-internalization rules. As such, the proposed changes herein are not novel and are familiar to market participants.[4]

Proposed Amendment

The Exchange proposes to amend the Rule 7.31–E(i)(2) in three ways, each of which would enhance ETP Holders' flexibility over the levels at which orders may be grouped for the purposes of applying the Exchange's existing STP modifiers.

First, the Exchange proposes to amend the rule to permit an ETP Holder to set the STP modifiers to apply at the level of a subidentifier of an MPID. This change would allow ETP Holders to prevent orders sent from the same subidentifier of a particular MPID from executing against each other, but permit orders sent from different subidentifiers of the same MPID to interact.[5]

Second, the Exchange proposes to amend Rule 7.31–E(i)(2) to permit an ETP Holder to set the STP modifiers to prevent orders from different MPIDs from executing against each other. The proposed amendment would address this by allowing ETP Holders to apply STP modifiers at the level of ''Client ID,'' which would be an identifier designated by the ETP Holder. As proposed, a Client ID would function similarly to an MPID in that it would be a unique identifier assigned to an ETP Holder. The Exchange believes that this proposed enhancement would provide ETP Holders with greater flexibility in how they instruct the Exchange to apply STP modifiers to their orders. The Exchange notes that it is not novel for an exchange to provide its members with multiple methods by which to designate anti-internalization instructions.[6]

Third, the Exchange proposes to amend Rule 7.31–E(i)(2) to permit ETP Holders to direct orders not to execute against orders entered across MPIDs associated with Affiliates of the ETP Holder that are also ETP Holders.[7] This change would expand the availability of the STP functionality to ETP Holders that have divided their business activities between separate corporate entities without disadvantaging them when compared to ETP Holders that operate their business activities within a single corporate entity.

The Exchange believes that these enhancements will all provide helpful flexibility for ETP Holders by expanding their ability to apply STP modifiers at multiple levels, including within a subidentifier of a single MPID, across multiple MPIDs of the same Client ID, and across multiple MPIDs of the ETP Holder and its Affiliates, in addition to at the MPID level as the current rule provides. These proposed changes would help ETP Holders better manage their order flow and prevent undesirable executions or the potential for ''wash sales'' that might otherwise occur.

To effect these changes, the Exchange proposes to amend the first sentence of Rule 7.31–E(i)(2) and add a new sentence as follows (proposed text italicized, deletions in brackets): ''Any incoming order to buy (sell) designated with an STP modifier will be prevented from trading with a resting order to sell (buy) also designated with an STP modifier and from *the same Client ID;* the same MPID *and, if specified, any subidentifier; or an Affiliate identifier (any such identifier, a ''Unique Identifier''). For purposes of this rule, the term ''Affiliate'' means any ETP Holder under 75% common ownership or control of that ETP Holder.*'' The Exchange further proposes to replace references to ''MPID'' in Rules 7.31–E(i)(2)(A)–(D) with the term ''Unique Identifier.''

While this proposal would expand how an ETP Holder can designate orders with an STP modifier, nothing in this proposal would make substantive changes to the STP modifiers themselves or how they would function with respect to two orders interacting within a relevant level.

The Exchange notes that, as with its current anti-internalization functionality, use of the proposed revised Rule 7.31–E(i)(2) will not alleviate or otherwise exempt ETP Holders from their best execution obligations. As such, ETP Holders using the proposed enhanced STP functionality will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization.

Timing and Implementation

The Exchange anticipates that the technology changes required to implement this proposed rule change will become available on a rolling basis,

[4] Several other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality. *See, e.g.,* Securities Exchange Act Release Nos. 96187 (October 31, 2022), 87 FR 66764 (November 4, 2022) (SR–IEX–2022–08); 96156 (October 25, 2022), 87 FR 65633 (October 31, 2022) (SR–BX–2022–020); 96154 (October 25, 2022), 87 FR 65631 (October 31, 2022) (SR-Phlx-2022–43); 96069 (October 13, 2022), 87 FR 63558 (October 19, 2022) (SR–NASDAQ–2022–56, implemented by SR–NASSDAQ–2022–60); and 96334 (November 16, 2022), 87 FR 71368 (November 22, 2022) (SR–PEARL–2022–48).

[5] This functionality exists on the Exchange's affiliate exchange Arca Options, and as such is not novel and is familiar to market participants. *See* Arca Options Rule 6.62P–O(i)(2) (''An Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in this paragraph will be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier from the same MPID, and, if specified, any subidentifier of that MPID.'').

[6] *See, e.g.,* MIAX Pearl, LLC (''MIAX Pearl Equities'') Rule 2614(f) (specifying that Self-Trade Prevention Modifiers will be applicable to orders ''from the same MPID, Exchange member identifier, trading group identifier, or Equity Member Affiliate (any such identifier, a 'Unique Identifier')'').

[7] The proposed definition of ''Affiliate'' is identical to the one currently provided in the Exchange's Fee Schedule. *See* NYSE Arca Equities Fees and Charges, ''General'' section II(c) (''For purposes of this Fee Schedule, the term ''affiliate'' shall mean any ETP Holder under 75% common ownership or control of that ETP Holder.''). This 75% threshold is not novel. *See, e.g.,* Nasdaq PHLX LLC (''Nasdaq PHLX'') Equity 4, Rule 3307(c).

beginning less than 30 days from the date of filing, to be completed by the end of the first quarter of 2023.

2. Statutory Basis

The Exchange believes that the 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, because 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system and is consistent with the protection of investors and the public interest because enhancing how ETP Holders may apply STP modifiers will provide ETP Holders with additional flexibility with respect to how they implement self-trade protections provided by the Exchange that may better support their trading strategies.

The Exchange believes that the proposed rule change does not unfairly discriminate among ETP Holders because the proposed STP protections will be available to all ETP Holders, and ETP Holders that prefer setting STP modifiers at the MPID level will still be able to do so. In addition, allowing ETP Holders to apply STP modifiers to trades submitted by their Affiliates that are also ETP Holders is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity.

Finally, the Exchange notes that other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality and similarly use a 75% threshold of common ownership for assessing whether such orders would be eligible for this enhancement.[10] Consequently, the Exchange does not believe that this change raises new or novel issues not already considered by the Commission.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance the Exchange's competitiveness by providing additional flexibility over the levels at which orders may be grouped for STP purposes, thereby incentivizing ETP Holders to send orders to the Exchange and increase the liquidity available on the Exchange. The Exchange also notes that the proposed new STP grouping options, like the Exchange's current anti-internalization functionality, are completely optional and ETP Holders can determine whether to apply anti-internalization protections to orders submitted to the Exchange, and if so, at what level to apply those protections (*e.g.,* MPID, subidentifier, Client ID, or Affiliate level). The proposed rule change would also improve the Exchange's ability to compete with other exchanges that recently amended their rules to expand the groupings for their own anti-internalization functionality. There is no barrier to other national securities exchanges adopting similar anti-internalization groupings as those proposed herein.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would enable the Exchange to compete with other exchanges that have recently amended their rules to expand the levels at which orders may be grouped for STP purposes. The Exchange states that at least one such competitor exchange plans to introduce similar capabilities to market participants as early as January 9, 2023. The Exchange also states that it is currently working on technological solutions to meet this competition and to make similar offerings available to market participants as soon as possible. The Exchange expects to begin rolling out this functionality in less than 30 days from the date of filing, and thus requests waiver of the operative delay in order to promptly meet market competition. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[15]

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.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* notes 4 and 7.

[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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

## 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–NYSEARCA–2023–07 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2023–07 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01401 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Advisers Act Release No. 6221/File No. 803–00256]**

## Calmwater Asset Management, LLC

January 19, 2023.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the ''Act'') and rule 206(4)–5(e) under the Act.

**APPLICANT:** Calmwater Asset Management, LLC (''Applicant'' or ''Adviser'')

**SUMMARY OF APPLICATION:** Applicant requests that the Commission issue an order under Section 206A of the Act and rule 206(4)–5(e) under the Act exempting them from rule 206(4)–5(a)(1) under the Act to permit Applicant to receive compensation from a government entity for investment advisory services provided to the government entity within the two-year period following a contribution by a covered associate of Applicant to an official of the government entity.

**FILING DATES:** The application was filed on October 17, 2022.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 13, 2023 and should be accompanied by proof of service on Applicant, 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 may request notification of a hearing by writing to the Commission's Secretary.

[16] 17 CFR 200.30–3(a)(12).

**ADDRESSES:** The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicant: Calmwater Asset Management, LLC, 11755 Wilshire Blvd., #1425, Los Angeles, CA 90025.

**FOR FURTHER INFORMATION CONTACT:** Juliet Han, Senior Counsel, at (202) 551–5213 or Kyle R. Ahlgren, Branch Chief, at (202) 551–6857 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website at *http://www.sec.gov/rules/iareleases.shtml* or by calling (202) 551–8090.

Applicant's Representations:

1. Applicant is a Delaware limited liability company registered with the Commission as an investment adviser under the Act. Applicant provides discretionary investment advisory services to private funds (the ''Funds'').

2. One of Applicant's clients is a government entity as defined in rule 206(4)–5(f)(5) in the State of Colorado (the ''Client''). The Client is a state pension fund with a board of trustees (the ''Board'') that consists of 16 trustees. The Colorado State Treasurer serves on the Board as an *ex officio* voting member, and the Board has the authority to select the investment adviser.

3. The individual who made the campaign contribution that triggered the two-year compensation ban (the ''Contribution'') is Larry Grantham (the ''Contributor''). At the time of the Contribution, the Contributor was the Managing Principal of the Adviser, a position he has held since the Adviser's founding in 2015. Thus, the Contributor was at all relevant times an executive officer of Applicant and a ''covered associate,'' as defined in rule 206(4)–5(f)(2)(i) under the Act. When a new fund is in a fundraising cycle, a placement agent generally introduces the Adviser to the potential investor and sets up meetings between them. The Contributor has historically attended such meetings with prospective investors, including occasionally government entities, *e.g.,* the Client, on behalf of the Adviser.

4. The recipient of the Contribution was Brian Watson (the ''Recipient''), an entrepreneur who owns and operates a commercial real estate firm and a private citizen who unsuccessfully campaigned for the office of Colorado State Treasurer in 2018. The Candidate did not hold a public office at the time

of the Contribution and, to Applicant's knowledge, has never held a public office before or after the Contribution nor served in any role that was directly or indirectly responsible for, or could influence the outcome of, the hiring of an investment adviser by a government entity. Nevertheless, because the Candidate was seeking the office of Colorado State Treasurer at the time of the Contribution, an office that includes a position as an *ex officio* voting member of the sixteen-member Board, the Candidate is an ''official'' of the Client as defined in rule 206(4)–5(f)(6)(i). The Contribution that triggered rule 206(4)–5's prohibition on compensation under rule 206(4)–5(a)(1) was made on November 6, 2018 for the amount of $250. The Contributor did not solicit or coordinate any other contributions for the Candidate. The Contribution was made for personal reasons based on the Contributor's friendship with the Candidate, which grew out of the professional relationship in commercial real estate lending and their shared interests in the outdoors, wildlife and environmental conservation. Applicant represents that the Contributor had no intention to seek, and no action was taken either by the Contributor or Applicant to obtain, any direct or indirect influence from the Candidate or any other person regarding the Client's decision-making.

5. The Client made its initial investment commitment to one of the Funds in May 2017, approximately 18 months before the November 6, 2018 Contribution Date, which is also the date that the Candidate lost the election. In March 2021, approximately 27 months after the Contribution Date and approximately 14 months after the return of the Contribution to the Contributor, the Client made a subsequent investment commitment to a new Fund. Applicant represents that at no point did the Candidate hold public office or have direct or indirect influence with the Board regarding the Client's selection of investment advisers, and at no point did the Contributor intend to influence the Candidate regarding the Client's investments in the Funds.

6. Applicant represents that the Contributor attempted to pre-clear the $250 Contribution by: (i) orally requesting pre-approval from the then chief-compliance officer; and (ii) following up via email with a written pre-approval request on November 5, 2018. On December 13, 2018, the Contributor completed and submitted the Adviser's Political Contribution Disclosure Form to disclose the Contribution as required under Applicant's Political Contributions Policy (the ''Policy''). The then-chief compliance officer forwarded the pre-approval request email to a designee, expecting the designee to confirm the permissibility of the Contribution with the Adviser's then-compliance consultant, but the inquiry as to the permissibility was not completed. On November 6, 2018, the Contributor believed that he had received oral pre-approval from the then-chief compliance officer and, when he did not hear otherwise, assumed that the Contribution was approved and made the Contribution. The Contributor did not complete pre-clearance through the Adviser's compliance software tool (the ''Tool'') as required by the Adviser's Policy because the Contributor believed that the then-chief compliance officer had sufficient written pre-clearance information via email.

7. The then-chief compliance officer remained unaware that the Contributor had made the Contribution until December 2018, when the then-compliance consultant discovered the Contribution during an annual review that included the assessment of certain reports generated by the Tool. The then-compliance consultant brought the Contribution to the attention of the then-chief compliance officer. After a review, the then-chief compliance officer determined that, absent an exemption, the Contribution violated the Rule and informed the Contributor. The Contributor requested a return of the Contribution from the Candidate by phone on or about January 11, 2020, and the Contributor received a full refund of the Contribution ($250) on or about January 27, 2020. Applicant created an escrow account on July 14, 2021 and escrowed advisory fees from the Client of $1.6 million. Applicant will continue to deposit fees that accrue from the Client's investments into the escrow account pending the outcome of the Application.

8. Since its registration with the Commission as an investment adviser in 2017, Applicant has maintained and updated the Policy. On the Contribution Date, the Policy required that ''covered associates'' (defined to include all employees), all of whom were aware that they were subject to the Policy, request and receive written pre-approval by the chief compliance officer with respect to all political contributions made by each covered associate and each covered associate's spouse to a state or local political office, political candidate, political party or political action committee. The Policy further stated that all covered associates are required to submit pre-approval requests to the chief compliance officer via the Tool. Between its registration in 2017 and the Contribution Date, the Adviser conducted training sessions regarding the Compliance Manual, including the Policy, and informed the Adviser's employees that they were subject to the Policy's requirements. All employees are required to attend the trainings, initially upon joining the firm and on an annual basis. The Adviser collects acknowledgements from the employees regarding their familiarity and compliance with the Compliance Manual, including the Policy, and their attendance at the training. The Contributor had attended all such required trainings since the Adviser's registration in 2017 and provided all related acknowledgements. Prior to the Contribution, the Adviser had engaged a compliance consultant to annually review and test its compliance program and compliance systems, make recommendations and implement changes, as appropriate, and conduct training for the employees on rule 206(4)–5, the Policy and other compliance topics, as needed.

9. Following the then-compliance consultant's discovery of the Contribution in December 2019, Applicant engaged in reactive and remedial measures including conducting a comprehensive search for any other political contributions by the Adviser's covered associates and hiring a monitoring service to check the names of the Adviser's employees against political contribution databases on a daily basis. The Adviser also updated the Policy to allow for political contribution pre-authorization requests to be sent to the chief compliance officer via email and to add quarterly certifications from employees regarding political contributions. The Adviser installed an upgraded version of the Tool in early May 2021. The Adviser further amended its compliance manual to implement procedures to identify and monitor the political contributions of covered associates including a review conducted on a quarterly basis by the Adviser's compliance department.

**Applicant's Legal Analysis**

1. Rule 206(4)–5(a)(1) under the Act prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of a government entity is made by the investment adviser or any covered associate of the investment adviser. The Client is a ''government entity,'' as defined in rule 206(4)–5(f)(5), the Contributor is a ''covered associate'' as

defined in rule 206(4)–5(f)(2), and the Official is an ''official'' as defined in rule 206(4)–5(f)(6).

2. Section 206A of the Act authorizes the Commission to ''conditionally or unconditionally exempt any person or transaction . . . from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].''

3. Rule 206(4)–5(e) provides that the Commission may conditionally or unconditionally grant an exemption to an investment adviser from the prohibition under rule 206(4)–5(a)(1) upon consideration of the factors listed below, among others:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(2) Whether the investment adviser: (i) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of the rule; (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (*e.g.,* federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to Section 206A and rule 206(4)–5(e), exempting them from the two-year prohibition on compensation imposed by rule 206(4)–5(a)(1) with respect to investment advisory services provided to the Client within the two-year period following the Contribution.

5. Applicant submits that the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that the other factors set forth in rule 206(4)–5(e) similarly weigh in favor of granting an exemption to Applicant to avoid consequences disproportionate to the violation.

6. Applicant contends that given the nature of the Contribution, and the lack of any evidence that the Adviser or the Contributor intended to, or actually did, interfere with the Client's process for the selection or retention of advisory services, the interests of the Client are best served by allowing the Adviser and the Client to continue their relationship uninterrupted. Applicant states that causing the Adviser to serve without compensation for the remainder of the two-year period could result in a financial loss of between $3.3 million and $4.2 million, approximately 13,200–16,800 times the amount of the Contribution. Applicant suggests that the policy underlying rule 206(4)–5 is served by ensuring that no improper influence is exercised over investment decisions by governmental entities as a result of campaign contributions, and not by withholding compensation as a result of unintentional violations.

7. Applicant represents that since its registration in 2017, the Adviser adopted and implemented the Policy which it believes was reasonably designed to prevent violations of rule 206(4)–5. Applicant represents that it has amended its Policy to implement enhanced procedures to, among other things, search federal and state campaign contribution databases on a daily basis to seek to identify and monitor any political contributions of covered associates.

8. Applicant asserts that before making the Contribution, the Contributor: (i) orally requested pre-approval from the then-chief compliance officer to make the Contribution, (ii) followed up via email with a written pre-approval request to the then-chief compliance officer on November 5, 2018 to approve of the Contribution, and (iii) made the Contribution of $250 on November 6, 2018. The Contributor did not seek pre-clearance through the Tool, as specified in the Policy, because the Contributor believed that the then-chief compliance officer had sufficient written pre-clearance information via email. The then-chief compliance officer forwarded the pre-approval request email to a designee, expecting the designee to confirm the permissibility of the Contribution with Applicant's then-compliance consultant, but the inquiry as to permissibility was not completed. The then-compliance consultant discovered the contribution during a compliance review in December 2019. Applicant represents that the then-chief compliance officer remained unaware the Contribution had been made until the then-compliance consultant discovered the Contribution during the course of Applicant's annual review in December 2019 and informed the then-chief compliance officer.

9. Applicant asserts that after learning of the Contribution, the then-chief compliance officer consulted outside counsel and undertook remedial measures, including informing the Contributor of the violation. The Contributor promptly requested a return of the Contribution from the Candidate by phone, and the Contributor received a check refunding the full amount on or about January 27, 2020. In addition, Applicant replaced the then-chief compliance officer with a new outsourced chief compliance officer. Applicant states that it also updated the Policy to allow for political contribution pre-authorization requests to be sent to the chief compliance officer via email and to add quarterly certifications from employees regarding political contributions. Applicant states that it has also installed an upgraded version of the Tool in early May 2021. Applicant states it has amended its compliance manual to implement procedures to identify and monitor the political contributions of covered associates.

10. Applicant states that the Client determined to invest with Applicant and established its advisory relationship on an arm's length basis approximately 18 months before the date of the Contribution free from any improper influence as a result of the Contribution. The Client's only subsequent investment with Applicant was approximately 27 months after the Contribution Date and approximately 14 months after the Candidate had returned the Contribution to the Contributor. Applicant also notes that the Candidate lost the election, and is a private citizen who, to Applicant's knowledge, never held public office or had any influence with respect to the Board. Applicant further represents that the Contributor's decision to make the Contribution to the Recipient was based on the Contributor's ideological beliefs and friendship with the Recipient, and not any desire to influence the Client's

award or retention of investment advisory business.

11. Applicant submits that neither the Adviser nor the Contributor sought to interfere with the Client's selection or retention process for advisory services, nor did they seek to negotiate higher fees or greater ancillary benefits. Applicant further submits that there was no violation of the Adviser's fiduciary duty to deal fairly or disclose material conflicts given the absence of any intent or action by the Adviser or the Contributor to influence the Client's selection process. Applicant contends that in the case of the Contribution, the imposition of the two-year prohibition on compensation does not achieve rule 206(4)–5's purposes and would result in consequences disproportionate to the mistake that was made.

**Applicant's Conditions**

Applicant agrees that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Adviser will appoint an independent compliance consultant to annually review and test its compliance program and compliance systems, including the Adviser's Policy, to ensure that they are reasonably designed to prevent violations of the Act and the rules thereunder. The Adviser will maintain records regarding such testing, which will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Adviser, and be available for inspection by the staff of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01397 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–96707; File No. SR–ICC–2023–001]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ICC's Fee Schedules

January 19, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4,[2] notice is hereby given that on January 5, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to modify ICC's fee schedules to implement reduced fees for credit default index swaptions (''Index Options'') for the remainder of calendar year 2023. These revisions do not require any changes to the ICC Clearing Rules.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

The proposed changes are intended to modify ICC's fee schedules to implement reduced fees for Index Options for the remainder of calendar year 2023.[5] ICC maintains a Clearing Participant (''CP'') fee schedule [6] and client fee schedule [7] (collectively, the ''fee schedules'') that are publicly available on its website, which ICC proposes to update. Clearing fees are due by CPs and clients in accordance with the product, amount and currency set out in the fee schedules and subject to any incentive program described in the fee schedules. The proposed changes to the fee schedules are set forth in Exhibit 5A and Exhibit 5B and described in detail as follows. ICC proposes to make such changes effective January 5, 2023 (the ''Effective Date''), subject to the completion of any applicable regulatory review process.

The amended CP fee schedule would reduce Index Option fees to $1.5/million or €1.5/million for the remainder of calendar year 2023. Under the regular CP fee schedule, Index Option fees are $3/million or €3/million, subject to an incentive program that provides a tiered discount schedule based on U.S. Dollar equivalent, non-discounted Index Option fees billed since the start of the year.[8] ICC also discounted CP Index Option fees for a portion of 2022, which expired at the end of calendar year 2022.[9] Under the proposed changes, in addition to updating the fee table, ICC would include a footnote to indicate that the listed fees of $1.5/million or €1.5/million are applicable from the Effective Date through calendar year 2023 and reflect a discount from ICC's regular Index Option fees of $3/million or €3/million. On the first business day of 2024, ICC would remove this discount and the listed fees would revert to ICC's regular Index Option fees on this schedule dated January 2024.

The amended client fee schedule would reduce Index Option fees to $2/million or €2/million for the remainder of calendar year 2023. Under the regular client fee schedule, Index Option fees are $4/million or €4/million. ICC also discounted client Index Option fees for a portion of 2022, which expired at the end of calendar year 2022.[10] Under the proposed changes, in addition to updating the fee table, ICC would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Pursuant to an Index Option contract, one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Options that may be cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Option by the Swaption Buyer in accordance with its terms.

[6] CP fee details available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.*

[7] Client fee details available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees.pdf.* As specified, all fees are charged directly to a client's CP.

[8] A description of this incentive program is included in a prior filing. SEC Release No. 34–90524 (November 27, 2020) (notice), 85 FR 78157 (December 3, 2020) (SR–ICC–2020–013).

[9] A description of the 2022 CP Index Option fee discount is included in prior SEC filing Release No. 34–94330 (February 28, 2022) (notice), 87 FR 12508 (March 4, 2022) (SR–ICC–2022–001).

[10] A description of the 2022 client Index Option fee discount is included in prior SEC filing Release No. 34–94330 (February 28, 2022) (notice), 87 FR 12508 (March 4, 2022) (SR–ICC–2022–001).

indicate in a footnote that the listed fees of $2/million or €2/million are applicable from the Effective Date through calendar year 2023 and reflect a discount from ICC's regular Index Option fees of $4/million or €4/million. On the first business day of 2024, ICC would remove this discount and the listed fees would revert to ICC's regular Index Option fees on this schedule dated January 2024.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act [11] and the regulations thereunder applicable to it. More specifically, the proposed rule change establishes or changes a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. ICC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(D),[14] which requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

ICC believes that the proposed discounts in the fee schedules have been set at an appropriate level. In determining the appropriate discount level, ICC considered factors such as volume, revenue, and market participation in the clearing service, including based on different fee levels. ICC also considered costs and expenses in offering clearing of Index Options, taking into account the investments that ICC has made in clearing such products and the level of investment and development needed for this clearing service at this time. In ICC's view, the fees are reasonable as the discounts correspond with anticipated volumes, costs and expenses, and revenues, and they consider current and past market activity as well as anticipated market activity with respect to clearing Index Options at ICC.[15] Furthermore, the proposed discounts are in line with past Index Option incentive programs that ICC offered, which similarly temporarily reduced Index Option fees without any further action required by CPs or clients. Under the proposed changes, the same percentage discount (*i.e.,* 50%) from ICC's regular Index Option fees would apply to both CPs and clients. These reduced fees are designed to incentivize the clearing of Index Options by CPs and clients to grow this clearing service.

Moreover, the proposed fee changes will apply equally to all market participants clearing Index Options. The reduced fees for Index Options for calendar year 2023 apply to all CPs and clients. ICC's fee schedules will continue to be transparent and to apply equally to market participants clearing indexes, single names, and Index Options at ICC. Therefore, the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among participants, within the meaning of Section 17A(b)(3)(D) of the Act.[16] ICC therefore believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [17] and the regulations thereunder applicable to it and is appropriately filed pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f)(2) of Rule 19b–4 [19] thereunder.

*(B) Clearing Agency's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. As discussed above, the proposed changes modify ICC's fee schedules to temporarily reduce fees for Index Options and will apply uniformly across all market participants. The implementation of such changes does not preclude other market participants from offering such instruments for clearing or offering incentive programs. Moreover, ICC does not believe that the amendments would adversely affect the ability of market participants to access clearing services. Accordingly, ICC does not believe the amendments impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2023–001 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2023–001. 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 such filings will also be available for

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78q–1(b)(3)(D).

[15] Supporting detail and additional data, including clearing statistics for Index Options is included in confidential Exhibit 3.

[16] 15 U.S.C. 78q–1(b)(3)(D).

[17] 15 U.S.C. 78q–1.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2023–001 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01407 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–96713; File No. SR–NYSECHX–2023–05]**

## Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31(i)(2)

January 19, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 12, 2023, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 7.31(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. Specifically, the Exchange proposes to allow Participants the option to apply STP modifiers to orders submitted not only from the same MPID, as the current rule provides, but also to orders submitted from (i) the same subidentifier of a particular MPID; (ii) other MPIDs associated with the same Client ID (as designated by the Participant); and (iii) Affiliates of the Participant.

Background

Currently, Rule 7.31(i)(2) offers optional anti-internalization functionality to Participants in the form of STP modifiers that enable a Participant to prevent two of its orders from executing against each other. Currently, Participants can set the STP modifier to apply at the market participant identifier (''MPID'') level. The STP modifier on the order with the most recent time stamp controls the interaction between two orders marked with STP modifiers. STP functionality assists market participants by allowing firms to better prevent unintended executions with themselves and to reduce the potential for ''wash sales'' that may occur as a result of the velocity of trading in a high-speed marketplace. STP functionality also assists market participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange notes that several equities exchanges—including IEX, Nasdaq, Nasdaq BX, Nasdaq Phlx, and MIAX Pearl Equities—have all recently amended their rules to provide additional levels at which orders may be grouped for the purposes of applying their anti-internalization rules. As such, the proposed changes herein are not novel and are familiar to market participants.[4]

Proposed Amendment

The Exchange proposes to amend the Rule 7.31(i)(2) in three ways, each of which would enhance Participants' flexibility over the levels at which orders may be grouped for the purposes of applying the Exchange's existing STP modifiers.

First, the Exchange proposes to amend the rule to permit a Participant to set the STP modifiers to apply at the level of a subidentifier of an MPID. This change would allow Participants to prevent orders sent from the same subidentifier of a particular MPID from executing against each other, but permit orders sent from different subidentifiers of the same MPID to interact.[5]

Second, the Exchange proposes to amend Rule 7.31(i)(2) to permit a Participant to set the STP modifiers to prevent orders from different MPIDs from executing against each other. The proposed amendment would address this by allowing Participants to apply STP modifiers at the level of ''Client ID,'' which would be an identifier designated by the Participant. As proposed, a Client ID would function similarly to an MPID in that it would be a unique identifier assigned to a Participant. The Exchange believes that this proposed enhancement would provide Participants with greater flexibility in how they instruct the Exchange to apply STP modifiers to their orders. The Exchange notes that it is not novel for an exchange to provide its members with multiple methods by

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Several other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality. *See, e.g.,* Securities Exchange Act Release Nos. 96187 (October 31, 2022), 87 FR 66764 (November 4, 2022) (SR–IEX–2022–08); 96156 (October 25, 2022), 87 FR 65633 (October 31, 2022) (SR–BX–2022–020); 96154 (October 25, 2022), 87 FR 65631 (October 31, 2022) (SR–Phlx–2022–43); 96069 (October 13, 2022), 87 FR 63558 (October 19, 2022) (SR–NASDAQ–2022–56, implemented by SR–NASSDAQ–2022–60); and 96334 (November 16, 2022), 87 FR 71368 (November 22, 2022) (SR–PEARL–2022–48).

[5] This functionality exists on the Exchange's affiliate exchange Arca Options, and as such is not novel and is familiar to market participants. *See* Arca Options Rule 6.62P–O(i)(2) (''An Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in this paragraph will be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier from the same MPID, and, if specified, any subidentifier of that MPID.'').

which to designate anti-internalization instructions.[6]

Third, the Exchange proposes to amend Rule 7.31(i)(2) to permit Participants to direct orders not to execute against orders entered across MPIDs associated with Affiliates of the Participant that are also Participants.[7] This change would expand the availability of the STP functionality to Participants that have divided their business activities between separate corporate entities without disadvantaging them when compared to Participants that operate their business activities within a single corporate entity.

The Exchange believes that these enhancements will all provide helpful flexibility for Participants by expanding their ability to apply STP modifiers at multiple levels, including within a subidentifier of a single MPID, across multiple MPIDs of the same Client ID, and across multiple MPIDs of the Participant and its Affiliates, in addition to at the MPID level as the current rule provides. These proposed changes would help Participants better manage their order flow and prevent undesirable executions or the potential for ''wash sales'' that might otherwise occur.

To effect these changes, the Exchange proposes to amend the first sentence of Rule 7.31(i)(2) and add a new sentence as follows (proposed text underlined, deletions in brackets): ''Any incoming order to buy (sell) designated with an STP modifier will be prevented from trading with a resting order to sell (buy) also designated with an STP modifier and from *the same Client ID;* the same MPID *and, if specified, any subidentifier; or an Affiliate identifier (any such identifier, a ''Unique Identifier''). For purposes of this rule, the term ''Affiliate'' means any Participant under 75% common ownership or control of that Participant.*'' The Exchange further proposes to replace references to ''MPID'' in Rules 7.31(i)(2)(A)–(D) with the term ''Unique Identifier.''

While this proposal would expand how a Participant can designate orders with an STP modifier, nothing in this proposal would make substantive changes to the STP modifiers themselves or how they would function with respect to two orders interacting within a relevant level.

The Exchange notes that, as with its current anti-internalization functionality, use of the proposed revised Rule 7.31(i)(2) will not alleviate or otherwise exempt Participants from their best execution obligations. As such, Participants using the proposed enhanced STP functionality will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization.

Timing and Implementation

The Exchange anticipates that the technology changes required to implement this proposed rule change will become available on a rolling basis, beginning less than 30 days from the date of filing, to be completed by the end of the first quarter of 2023.

2. Statutory Basis

The Exchange believes that the 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, because 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system and is consistent with the protection of investors and the public interest because enhancing how Participants may apply STP modifiers will provide Participants with additional flexibility with respect to how they implement self-trade protections provided by the Exchange that may better support their trading strategies.

The Exchange believes that the proposed rule change does not unfairly discriminate among Participants because the proposed STP protections will be available to all Participants, and Participants that prefer setting STP modifiers at the MPID level will still be able to do so. In addition, allowing Participants to apply STP modifiers to trades submitted by their Affiliates that are also Participants is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity.

Finally, the Exchange notes that other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality and similarly use a 75% threshold of common ownership for assessing whether such orders would be eligible for this enhancement.[10] Consequently, the Exchange does not believe that this change raises new or novel issues not already considered by the Commission.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance the Exchange's competitiveness by providing additional flexibility over the levels at which orders may be grouped for STP purposes, thereby incentivizing Participants to send orders to the Exchange and increase the liquidity available on the Exchange. The Exchange also notes that the proposed new STP grouping options, like the Exchange's current anti-internalization functionality, are completely optional and Participants can determine whether to apply anti-internalization protections to orders submitted to the Exchange, and if so, at what level to apply those protections (*e.g.,* MPID, subidentifier, Client ID, or Affiliate level). The proposed rule change would also improve the Exchange's ability to compete with other exchanges that recently amended their rules to expand the groupings for their own anti-internalization functionality. There is no barrier to other national securities exchanges adopting similar anti-

[6] *See, e.g.,* MIAX Pearl, LLC (''MIAX Pearl Equities'') Rule 2614(f) (specifying that Self-Trade Prevention Modifiers will be applicable to orders ''from the same MPID, Exchange member identifier, trading group identifier, or Equity Member Affiliate (any such identifier, a 'Unique Identifier')'').

[7] The proposed definition of ''Affiliate'' is identical to the one currently provided in the Exchange's Fee Schedule. *See* Fee Schedule of NYSE Chicago, Inc., Section O(c) (''For purposes of this Fee Schedule, the term ''affiliate'' shall mean any Participant under 75% common ownership or control of that Participant.''). This 75% threshold is not novel. *See, e.g.,* Nasdaq PHLX LLC (''Nasdaq PHLX'') Equity 4, Rule 3307(c).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* notes 4 and 7.

internalization groupings as those proposed herein.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would enable the Exchange to compete with other exchanges that have recently amended their rules to expand the levels at which orders may be grouped for STP purposes. The Exchange states that at least one such competitor exchange plans to introduce similar capabilities to market participants as early as January 9, 2023. The Exchange also states that it is currently working on technological solutions to meet this competition and to make similar offerings available to market participants as soon as possible. The Exchange expects to begin rolling out this functionality in less than 30 days from the date of filing, and thus requests waiver of the operative delay in order to promptly meet market competition. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[15]

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–NYSECHX–2023–05 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–NYSECHX–2023–05. 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–NYSECHX–2023–05 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01406 Filed 1–24–23; 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–96711; File No. SR–NYSEAMER–2023–06]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Equities Price List

January 19, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 12, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List (the ''Price List'') with respect to certain regulatory fees related to the Central Registration Depository (''CRD'' or ''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee change on January 12, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Price List with respect to certain regulatory fees collected by FINRA for use of CRD.[4] The Exchange proposes to implement the fee changes effective January 12, 2023.[5]

FINRA collects and retains certain regulatory fees via CRD for the registration of associated persons of Exchange ETP Holders that are not FINRA members (''Non-FINRA ETP Holders'').[6] CRD fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA ETP Holders.

FINRA recently amended two of the fees assessed for use of the CRD system.[7] Accordingly, the Exchange proposes to amend the Price List to mirror the fees assessed by FINRA, which will be implemented concurrently with the amended FINRA fee as of January 2023.[8] Specifically, the Exchange proposes to amend the Price List to modify the fee charged to Non-FINRA ETP Holders for additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings from $110 to $155 [9] and the fee for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints, from $15 to $20.[10]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4) [12] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fee change is reasonable because the fee will be identical to that adopted by FINRA as of January 2023 for use of the CRD system to submit an initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings and the posting to CRD each set of fingerprints submitted electronically to FINRA. The costs of operating and improving the CRD system are similarly borne by FINRA when a Non-FINRA ETP Holder uses the CRD system; accordingly, the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed to FINRA members. In addition, as FINRA noted in amending its fees, it believes that its proposed pricing structure is reasonable and correlates fees with the components that drive its regulatory costs to the extent feasible. The Exchange further believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA ETP Holders. All similarly situated ETP Holders are subject to the same fee structure, and every ETP Holder must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange.

The Exchange also believes that the proposed fee change provides for the equitable allocation of reasonable fees and other charges, and does not unfairly discriminate between customers, issuers, brokers, and dealers. The fee applies equally to all individuals and firms required to report information the CRD system, and the proposed change will result in the same regulatory fees being charged to all ETP Holders required to report information to CRD

[4] CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

[5] The Exchange originally filed to amend the Price List on January 3, 2023 (SR–NYSEAmer–2023–01). On January 12, 2023, SR–NYSEAmer–2023–01 was withdrawn and replaced by this filing.

[6] The Exchange originally adopted fees for use of the CRD system in 2003 and amended those fees in 2013 and 2022. *See* Securities Exchange Act Release No. 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003) (SR–Amex–2003–49); Securities Exchange Act Release No. 68630 (January 11, 2013), 78 FR 6152 (January 29, 2013) (SR–NYSEMKT–2013–01); Securities Exchange Act Release No. 93902 (January 5, 2022), 87 FR 1461 (January 11, 2022) (SR–NYSEAmer–2021–47). While the Exchange lists these fees in its Price List, it does not collect or retain these fees.

[7] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032).

[8] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA ETP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE American-only ETP Holders. Non-FINRA ETP Holders have been charged CRD system fees since 2003. *See* note 5, *supra.* ETP Holders that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

[9] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws.

[10] *See* Section (4)(b)(4) of Schedule A to the FINRA By-laws.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

and for services performed by FINRA regardless of whether such ETP Holders are FINRA members. Accordingly, the Exchange believes that the fee collected for such use should increase in lockstep with the fee adopted by FINRA as of January 2023, as is proposed by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed change will reflect fees that will be assessed by FINRA as of January 2023 and will thus result in the same regulatory fees being charged to all ETP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ETP Holders are FINRA members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[15] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2023–06 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–NYSEAMER–2023–06. 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–NYSEAMER–2023–06 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01403 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *See* 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Tuesday, February 7, 2023, at the Commission's headquarters and via videoconference.

**PLACE:** The meeting will be conducted by remote means (videoconference) and at the Commission's headquarters, 100 F Street NE, Washington, DC 20549, in Multi-Purpose Room LL–006. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

**STATUS:** The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

**MATTER TO BE CONSIDERED:** The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

*Authority:* 5 U.S.C. 552b.

Dated: January 23, 2023.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2023–01579 Filed 1–23–23; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–96714; File No. SR–NYSE–2023–06]**

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31(i)(2)

January 19, 2023.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 12, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 7.31(i)(2) to enhance the Exchange's existing Self Trade Prevention (''STP'') modifiers. Specifically, the Exchange proposes to allow member organizations the option to apply STP modifiers to orders submitted not only from the same MPID, as the rule currently provides, but also to orders submitted from (i) the same subidentifier of a particular MPID; (ii) other MPIDs associated with the same Client ID (as designated by the member organization); and (iii) Affiliates of the member organization.

Background

Currently, Rule 7.31(i)(2) offers optional anti-internalization functionality to member organizations in the form of STP modifiers that enable a member organization to prevent two of its orders from executing against each other. Currently, member organizations can set the STP modifier to apply at the ''MPID'' level.[4] The STP modifier on the order with the most recent time stamp controls the interaction between two orders marked with STP modifiers. STP functionality assists market participants by allowing firms to better prevent unintended executions with themselves and to reduce the potential for ''wash sales'' that may occur as a result of the velocity of trading in a high-speed marketplace. STP functionality also assists market participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange notes that several equities exchanges—including IEX, Nasdaq, Nasdaq BX, Nasdaq PHLX, and MIAX Pearl Equities—have all recently amended their rules to provide additional levels at which orders may be grouped for the purposes of applying their anti-internalization rules. As such, the proposed changes herein are not novel and are familiar to market participants.[5]

Proposed Amendment

The Exchange proposes to amend the Rule 7.31(i)(2) in three ways, each of which would enhance member organizations' flexibility over the levels at which orders may be grouped for the purposes of applying the Exchange's existing STP modifiers.

First, the Exchange proposes to amend the rule to permit a member organization to set the STP modifiers to apply at the level of a subidentifier of an MPID. This change would allow member organizations to prevent orders sent from the same subidentifier of a particular MPID from executing against each other, but permit orders sent from different subidentifiers of the same MPID to interact.[6]

Second, the Exchange proposes to amend Rule 7.31(i)(2) to permit a member organization to set the STP modifiers to prevent orders from different MPIDs from executing against each other. The proposed amendment would address this by allowing member organizations to apply STP modifiers at the level of ''Client ID,'' which would be an identifier designated by the member organization.[7] As proposed, a Client ID would function similarly to an MPID in that it would be a unique identifier assigned to a member organization. The Exchange believes that this proposed enhancement would provide member organizations with greater flexibility in how they instruct the Exchange to apply STP modifiers to their orders. The Exchange notes that it is not novel for an exchange to provide its members with multiple methods by which to designate anti-internalization instructions.[8]

Third, the Exchange proposes to amend Rule 7.31(i)(2) to permit member organizations to direct orders not to execute against orders entered across MPIDs associated with Affiliates of the member organization that are also member organizations.[9] This change would expand the availability of the STP functionality to member organizations that have divided their business activities between separate corporate entities without disadvantaging them when compared to member organizations that operate their business activities within a single corporate entity.

The Exchange believes that these enhancements will all provide helpful flexibility for member organizations by expanding their ability to apply STP modifiers at multiple levels, including within a subidentifier of a single MPID, across multiple MPIDs of the same Client ID, and across multiple MPIDs of the member organization and its Affiliates, in addition to at the MPID level as the current rule provides. These proposed changes would help member organizations better manage their order flow and prevent undesirable executions or the potential for ''wash sales'' that might otherwise occur.

[4] The Exchange decommissioned the Pillar Phase I protocols described in Rule 7.31(i)(2)(F).

[5] Several other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality. *See, e.g.,* Securities Exchange Act Release Nos. 96187 (October 31, 2022), 87 FR 66764 (November 4, 2022) (SR–IEX–2022–08); 96156 (October 25, 2022), 87 FR 65633 (October 31, 2022) (SR–BX–2022–020); 96154 (October 25, 2022), 87 FR 65631 (October 31, 2022) (SR–PHLX–2022–43); 96069 (October 13, 2022), 87 FR 63558 (October 19, 2022) (SR–NASDAQ–2022–56, implemented by SR–NASSDAQ–2022–60); and 96334 (November 16, 2022), 87 FR 71368 (November 22, 2022) (SR–PEARL–2022–48).

[6] This functionality exists on the Exchange's affiliate exchange Arca Options, and as such is not novel and is familiar to market participants. *See* Arca Options Rule 6.62P–O(i)(2) (''An Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in this paragraph will be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier from the same MPID, and, if specified, any subidentifier of that MPID.'').

[7] Note that the term ''Client ID'' would no longer have the definition ascribed to it in subparagraph (F) of Rule 7.31(i)(2), as the Exchange proposes to delete that subparagraph as obsolete. *See infra* note 9 and accompanying text.

[8] *See, e.g.,* MIAX Pearl, LLC (''MIAX Pearl'') Rule 2614(f) (specifying that Self-Trade Prevention Modifiers will be applicable to orders ''from the same MPID, Exchange member identifier, trading group identifier, or Equity Member Affiliate (any such identifier, a 'Unique Identifier')'').

[9] The proposed definition of ''Affiliate'' is identical to the one currently provided in the Exchange's Price List. *See* NYSE Price List, ''General'' section II(c) (''For purposes of this Fee Schedule, the term 'affiliate' shall mean any member organization under 75% common ownership or control of that member organization.''). This 75% threshold is not novel. *See, e.g.,* Nasdaq PHLX LLC (''Nasdaq PHLX'') Equity 4, Rule 3307(c).

To effect these changes, the Exchange proposes to amend the first sentence of Rule 7.31(i)(2) and add a new sentence as follows (proposed text italicized, deletions in brackets): ''Any incoming order to buy (sell) designated with an STP modifier will be prevented from trading with a resting order to sell (buy) also designated with an STP modifier and from the same Client ID;[, as designated by the member organization] *the same MPID and, if specified, any subidentifier; or an Affiliate identifier (any such identifier, a ''Unique Identifier''). For purposes of this rule, the term ''Affiliate'' means any member organization under 75% common ownership or control of that member organization.*'' The Exchange further proposes to replace references to ''Client ID'' in Rules 7.31(i)(2)(A)–(E) and related subparagraphs with the term ''Unique Identifier.'' The Exchange also proposes to delete subparagraph (F) of Rule 7.31(i)(2) as obsolete, since it pertains to Pillar Phase I and II protocols that were in place during the Exchange's migration to Pillar, which was completed in 2021.[10]

While this proposal would expand how a member organization can designate orders with an STP modifier, nothing in this proposal would make substantive changes to the STP modifiers themselves or how they would function with respect to two orders interacting within a relevant level.

The Exchange notes that, as with its current anti-internalization functionality, use of the proposed revised Rule 7.31(i)(2) will not alleviate or otherwise exempt member organizations from their best execution obligations. As such, member organizations using the proposed enhanced STP functionality will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization.

Timing and Implementation

The Exchange anticipates that the technology changes required to implement this proposed rule change will become available on a rolling basis, beginning less than 30 days from the date of filing, to be completed by the end of the first quarter of 2023.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, because 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system and is consistent with the protection of investors and the public interest because enhancing how member organizations may apply STP modifiers will provide member organizations with additional flexibility with respect to how they implement self-trade protections provided by the Exchange that may better support their trading strategies.

The Exchange believes that the proposed rule change does not unfairly discriminate among member organizations because the proposed STP protections will be available to all member organizations, and member organizations that prefer setting STP modifiers at the MPID level will still be able to do so. In addition, allowing member organizations to apply STP modifiers to trades submitted by their Affiliates that are also member organizations is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity.

Finally, the Exchange notes that other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality and similarly use a 75% threshold of common ownership for assessing whether such orders would be eligible for this enhancement.[13] Consequently, the Exchange does not believe that this change raises new or novel issues not already considered by the Commission.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance the Exchange's competitiveness by providing additional flexibility over the levels at which orders may be grouped for STP purposes, thereby incentivizing member organizations to send orders to the Exchange and increase the liquidity available on the Exchange. The Exchange also notes that the proposed new STP grouping options, like the Exchange's current anti-internalization functionality, are completely optional and member organizations can determine whether to apply anti-internalization protections to orders submitted to the Exchange, and if so, at what level to apply those protections (*e.g.,* MPID, subidentifier, Client ID, or Affiliate level). The proposed rule change would also improve the Exchange's ability to compete with other exchanges that recently amended their rules to expand the groupings for their own anti-internalization functionality. There is no barrier to other national securities exchanges adopting similar anti-internalization groupings as those proposed herein.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the

[10] *See* Securities Exchange Act Release No. 93496 (November 1, 2021), 86 FR 61354 (November 5, 2021) (SR–NYSE–2021–63) (eliminating obsolete Pillar port transition fee pricing in light of completion of migration).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* notes 5 and 8.

Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it would enable the Exchange to compete with other exchanges that have recently amended their rules to expand the levels at which orders may be grouped for STP purposes. The Exchange states that at least one such competitor exchange plans to introduce similar capabilities to market participants as early as January 9, 2023. The Exchange also states that it is currently working on technological solutions to meet this competition and to make similar offerings available to market participants as soon as possible. The Exchange expects to begin rolling out this functionality in less than 30 days from the date of filing, and thus requests waiver of the operative delay in order to promptly meet market competition. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

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–NYSE–2023–06 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–NYSE–2023–06. 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–NYSE–2023–06 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–01412 Filed 1–24–23; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Delegation of Authority No. 535]**

### Delegation to the Under Secretary of State for Political Affairs for Country Reports on Terrorism

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1(a)(4) of the State Department Basic Authorities Act (22 U.S.C. 2651a(a)(4)), I hereby delegate to the Under Secretary of State for Political Affairs the functions and authorities related to the annual country reports on terrorism under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f).

The Secretary, Deputy Secretary, and Deputy Secretary for Management and Resources may also exercise any function or authority delegated herein. Any reference in this delegation of authority to a statute shall be deemed to be a reference to such statute as amended from time to time and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority does not repeal any other delegation of authority currently in effect. This delegation of authority will be published in the **Federal Register**.

Dated: January 6, 2023.

**Antony J. Blinken,**

*Secretary of State.*

[FR Doc. 2023–01484 Filed 1–24–23; 8:45 am]

**BILLING CODE 4710–AD–P**

## DEPARTMENT OF STATE

**[Delegation of Authority No. 533–1]**

### Delegation of Authority; Designation of Foreign Country for Definition of Covered Employee, Covered Individual, and Qualifying Injury

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and § 901 of the Further Consolidated Appropriations Act, 2020 (Div. J, Title

IX, Pub. L. 116–94), as amended (the Act), and codified in 22 U.S.C. 2680b, I hereby delegate to the Under Secretary of State for Management, to the extent authorized by law, the authority to designate ''another foreign country'' for purposes of the definition of ''Covered Employee,'' ''Covered Individual,'' and ''Qualifying Injury'', as provided in subsections (e)(2), (e)(3)(A), (e)(4)(A)(i), (e)(4)(B)(i), and (f) of § 901, as amended (22 U.S.C. 2680b(e)(2); 22 U.S.C. 2680b(e)(3)(A); 22 U.S.C. 2680b(e)(4)(A)(i); 22 U.S.C. 2680b(e)(4)(B)(i); and 22 U.S.C. 2680b(f)).

Any act, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, regulation, or procedure as amended from time to time.

The Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources, may also exercise the authorities delegated herein. Nothing in this delegation shall be deemed to supersede or modify any other delegation of authority. This document shall be published in the **Federal Register**.

Dated: January 17, 2023.

**Antony J. Blinken,**

*Secretary of State.*

[FR Doc. 2023–01482 Filed 1–24–23; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice 11976]**

### Notice of a Public Meeting in Preparation for the International Maritime Organization FAL 47 Meeting

The Department of State will conduct a public meeting at 10:00 a.m. on Tuesday, March 7, 2023, both in-person at the offices of ABSG Consulting in Washington, DC, and via teleconference. The primary purpose of the meeting is to prepare for the forty-seventh session of the International Maritime Organization's (IMO) Facilitation Committee (FAL 47) to be held at IMO Headquarters in London, United Kingdom from Monday, March 13, 2023, to Friday, March 17, 2023.

Members of the public may participate in-person or up to the capacity of the teleconference phone line, which can handle 500 participants. To RSVP, participants should contact the meeting coordinator, Mr. James Bull, by email at *James.T.Bull@uscg.mil.* The meeting location will be the offices of ABSG Consulting at 80 M Street SE, Suite 480, Washington, DC 20003, and the teleconference line will be provided to those who RSVP.

The agenda items to be considered at this meeting mirror those to be considered at FAL 47, and include:

- Opening of the session
- Adoption of the agenda; report on credentials
- Decisions of other IMO bodies
- Consideration and adoption of amendments to the Convention
- Review and update of the Explanatory Manual to the FAL Convention
- Application of single window concept
- Review and revision of the IMO Compendium on Facilitation and Electronic Business, including additional e-business solutions
- Consideration of descriptions of Maritime Services in the context of e-navigation
- Development of guidelines for harmonized communication and electronic exchange of operational data for port calls
- Development of guidelines on Port Community Systems
- Unsafe mixed migration by sea
- Consideration and analysis of reports and information on persons rescued at sea and stowaways
- Measures to address Maritime Autonomous Surface Ships (MASS) in the instruments under the purview of the Facilitation Committee
- Introduction of the API/PNR concept in maritime transport
- Analysis of possible means of auditing compliance with the Convention on Facilitation of International Maritime Traffic
- Technical cooperation activities related to facilitation of maritime traffic
- Relations with other organizations
- Application of the Committee's procedures on organization and method of work
- Work program
- Election of Chair and Vice-Chair for 2024
- Any other business
- Consideration of the report of the Committee on its forty-seventh session

*Please note:* The Committee may, on short notice, adjust the FAL 47 agenda to accommodate the constraints associated with the meeting format. Although no changes to the agenda are anticipated, if any are necessary, they will be provided to those who RSVP.

Those who plan to participate may contact the meeting coordinator, Mr. James Bull, by email at *James.T.Bull@uscg.mil* or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7501, Washington, DC 20593–7501. Members of the public needing reasonable accommodation should advise Mr. James Bull not later than February 28, 2023. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

**Emily A. Rose,**

*Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.*

[FR Doc. 2023–01442 Filed 1–24–23; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF STATE

**[Delegation of Authority No. 479–1]**

### Re-Delegation; Authority To Invoke the Deliberative-Process Privilege

By virtue of the authority vested in Department of State Legal Adviser by Delegation of Authority 479, dated December 17, 2019, and to the extent authorized by law, I hereby re-delegate the authority to assert the deliberative-process privilege in judicial and administrative proceedings to the Deputy Legal Advisers.

The guidelines and exclusions contained in Delegation of Authority 479 apply to this re-delegation.

This delegation does not repeal or modify any delegation of authority currently in effect. This delegation does not rescind or disapprove of any of the Department's prior invocations of the deliberative-process privilege.

This delegation of authority shall be published in the **Federal Register**.

Dated: January 16, 2023.

**Richard C. Visek,**

*Acting Legal Adviser, U.S. Department of State.*

[FR Doc. 2023–01485 Filed 1–24–23; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2022–1711]**

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) Monitoring, Reporting, and Verification (MRV) Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The collection involves a request that airplane operators subject to the applicability of Annex 16, Volume IV of the Convention on Civil Aviation (hereinafter the ''Chicago Convention'') submit electronically an Emissions Monitoring Plan (EMP), an annual Emissions Report (ER) to the FAA. Airplane operators may also submit an optional ER CORSIA Eligible Fuels Annex (CEFA) to the FAA if they want to receive credit for their use of CORSIA Eligible Sustainable Aviation Fuel (SAF) or Lower Carbon Aviation Fuel (LCAF). The information to be collected is necessary because FAA will use the information to fulfill the United States' responsibilities under the Chicago Convention

**DATES:** Written comments should be submitted by March 27, 2023.

**ADDRESSES:** Please send written comments:

*By Electronic Docket: www.regulations.gov* (Enter docket number into search field).

*By mail:* Kevin Partowazam, Federal Aviation Administration, AEE–5, 800 Independence Ave. SW, Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Kevin Partowazam by email at: *kevin.partowazam@faa.gov;* phone: 202–267–3563.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120–0790.

*Title:* CORSIA Monitoring, Reporting, and Verification (MRV) Program.

*Form Numbers:* 1. Emissions Monitoring Plan (EMP) Template; 2. Emissions Report (ER) Template; 3. ER CORSIA Eligible Fuels Annex (CEFA).

*Type of Review:* Clearance of a renewal of an information collection.

*Background:* The CORSIA MRV Program is a voluntary program for certain U.S. air carriers and commercial operators (collectively referred hereinafter as ''operators'') to submit certain airplane $CO_2$ emissions data to the FAA to enable the United States to establish uniformity with ICAO Standards And Recommended Practices (SARPs) for CORSIA, which were adopted in June 2018, as Annex 16, Volume IV to the Chicago Convention. The United States supported the decision to adopt the CORSIA SARPs based on the understanding that CORSIA is the exclusive market-based measure applying to international aviation, and that CORSIA will ensure fair and reciprocal commercial competition by avoiding a patchwork of country- or regionally-based regulatory measures that are inconsistently applied, bureaucratically costly, and economically damaging. Furthermore, continued U.S. support for CORSIA assumes a high level of participation by other countries, particularly by countries with significant aviation activity, as well as a final CORSIA package that is acceptable to, and implementable by, the United States.

Under CORSIA, all ICAO Member States whose airplane operators undertake international flights will have needed to develop an MRV system for $CO_2$ emissions from those international flights starting January 1, 2019. The FAA's CORSIA MRV Program is intended to be the United States' MRV system for monitoring, reporting, and verification of U.S. airplane operator $CO_2$ emissions from international flights.

Operators that are subject to the applicability of CORSIA will submit their EMPs, ERs, and ER CEFAs electronically.[1]

Each document uses Microsoft Excel-based templates and can be transmitted via email or uploaded to a web portal. EMPs that are submitted by operators will be used as a collaborative tool between the operator and FAA to document a given operator's chosen fuel use monitoring procedures. FAA will retain a copy of the EMP and will share with ICAO a list of operators that submit EMPs. FAA will not submit any specific EMPs from U.S. operators to ICAO. Large operators, *i.e.,* those emitting 500,000 metric tons or more of $CO_2$ per year, will gather data through a ''fuel use monitoring method.'' Small operators, *i.e.,* those emitting less than 500,000 metric tons of $CO_2$ per year, can use a simplified monitoring method. Annual ERs and optional ER CEFAs that are submitted to FAA by operators and verifiers will be used to document each operators' international emissions. FAA will use the ERs and ER CEFAs to calculate aggregated emissions data for all U.S. operators. FAA will submit the aggregated emissions data to ICAO to demonstrate U.S. implementation of CORSIA.

*Respondents:* Respondents will be airplane operators subject to the applicability of Annex 16, Volume IV of the Chicago Convention. Since the CORSIA MRV Program was originally launched, FAA received 30 EMPs from participating operators, along with an annual ER from each. Some additional operators could submit an EMP and ER over time based on their international aviation activities.

*Frequency:* An EMP is a one-time submission. An ER, and optional ER CEFA, is an annual submission.

*Estimated Average Burden per Response:* FAA expects that filling and submitting an EMP could take an average of approximately 28.6 hours per operator. FAA expects that for operators using a Fuel Use Monitoring Method, the reporting hour burden could be approximately 47.5 hours per operator, per year. For operators using a simplified Monitoring Method, the reporting hour burden could be approximately 16 hours per operator, per year.

*Estimated Total Annual Burden:* Based on the above, FAA expects that the average annual submission of an ER could take approximately 49.4 hours per operator, per year. For operators using a Fuel Use Monitoring Method, this includes 60 hours per operator, per year for filling and reporting an ER and an additional potential 8 hours for filling and reporting the ER CEFA. For operators using simplified Monitoring Methods, this includes 17.5 hours per operator, per year for filling and reporting an ER and an additional potential 4 hours for filling and reporting the ER CEFA.

[1] CORSIA applies to airplane operators that produce annual $CO_2$ emissions greater than 10,000 tonnes (*i.e.,* 10,000 metric tons) from international flights, excluding emissions from excluded flights. The following activities are excluded CORSIA:

—Domestic flights;

—Humanitarian, medical, and firefighting operations, including flight(s) preceding or following a humanitarian, medical, or firefighting flight provided such flight(s) were conducted with the same airplane, were required to accomplish the related humanitarian, medical, or firefighting activities or to reposition thereafter the airplane for its next activity;

—Operations using an airplane with a maximum certificated take-off mass equal to or less than 5,700 kg;

—Operations on behalf of the military.

Issued in Washington, DC, on January 19, 2023.

**Kevin Welsh,**

*Executive Director, Office of Environment and Energy.*

[FR Doc. 2023–01405 Filed 1–24–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2009–0074]**

### Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated October 31, 2022, Canadian National Railway Company (CN), the Transportation Division of the International Association of Sheet Metal, Air, Rail, and Transportation Workers, and the Brotherhood of Locomotive Engineers and Trainmen collectively petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the hours of service laws contained at title 49 United States Code (U.S.C.) section 21103(a). The relevant FRA Docket Number is FRA–2009–0074.

Specifically, petitioners requested an extension of the existing relief from the provisions of 49 U.S.C. 21103(a)(4), which in part, provides that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal. In support of the request, petitioners explained that CN has operated these schedules of 6 consecutive on-duty periods followed by 24 hours off duty successfully since 2002 and that the relief is ''very unlikely to have had any impact on any recent safety trends.'' Petitioners further state that CN's recent internal review of human factor-caused accidents has determined that ''the absence of human factors incidents involving persons covered under this waiver demonstrates that continued operation under the waiver has not caused a problem with safety.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by March 27, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety Chief Safety Officer.*

[FR Doc. 2023–01450 Filed 1–24–23; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2023–0004]**

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by letter dated January 9, 2023, Union Pacific Railroad Company (UPRR) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2023–0004.

Specifically, UPRR requests a suspension of block signals between CP Reynard (F 417) and CP Phil (F 430) on the Winnemucca Subdivision, near Gerlach, Nevada. UPRR explains that this suspension would be temporary, and UPRR would later request to ''remove [Centralized Traffic Control (CTC)] limits and replace with [Track Warrant Control (TWC)] limits through the same area.'' In support of its request, UPRR states that its dispatching software cannot grant track warrants through the subject area, but when they can grant track warrants, UPRR will notify FRA prior to implementation of TWC limits. UPRR requests the suspension of block signals for up to six months from the date of approval. UPRR explains that the reason for the proposed suspension is that UPRR ''has an uncurable situation with contaminated track conditions that will not allow the signal system to function properly.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by February 24, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. FRA notes that it may consider the application before the end of this comment period, but any final action would be contingent on subsequent consideration of any comments that may be received in this docket.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to

better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2023–01451 Filed 1–24–23; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2022–0081]**

### Hazardous Materials: Notice of Application for Special Permit; Extension of Comment Period

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Application for a new special permit (21283–N); extension of comment period.

**SUMMARY:** On December 5, 2022, PHMSA announced a notice to provide awareness and solicit comments regarding a special permit application currently under review by PHMSA in consultation with the Federal Railroad Administration. In this notice, PHMSA is extending the comment period from January 4, 2023, until February 21, 2023.

**DATES:** Interested persons are invited to submit comments on or before February 21, 2023. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the docket number PHMSA–2022–0081 by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140 in the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number (PHMSA–2022–0081) for this notice at the beginning of the comment. All comments will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

*Docket:* To access background documents or comments received, the dockets are available at *http://www.regulations.gov* or the DOT's Docket Operations Office at the above addresses.

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments to this notice contain commercial or financial information that is customarily treated as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPRIETARY.'' PHMSA will treat such marked submissions as confidential under the Freedom of Information Act (FOIA).

Submissions containing CBI should be sent to Tony Gale, Transportation Specialist, Office of Hazardous Materials Safety, (202) 366–4535, *specialpermits@dot.gov,* PHMSA, East Building, PHH10, 1200 New Jersey Avenue SE, Washington, DC 20590. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Tony Gale, Transportation Specialist, Office of Hazardous Materials, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4535, *specialpermits@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On December 5, 2022, PHMSA announced a notice to provide awareness and solicit comments regarding a special permit application to authorize the transportation in commerce of cryogenic ethane in DOT–113C120W9 and DOT–113C120W tank cars via rail freight.[1] The notice informed the public that the subject matter of the special permit—*i.e.,* transportation of cryogenic flammable liquids in rail tank cars—raises issues similar to the transportation of Liquefied Natural Gas (LNG) by rail, a matter for which multiple rulemakings are pending at the agency. PHMSA received five requests to extend the comment period to allow additional time for interested persons to prepare comments. In response to those requests, PHMSA is extending the comment period by 48 days until February 21, 2023. This extension provides the public additional time to provide extensive comments on the notice.

Issued in Washington, DC, on January 20, 2023, under authority delegated in 49 CFR 1.97.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

[FR Doc. 2023–01455 Filed 1–24–23; 8:45 am]

**BILLING CODE 4910–60–P**

## UNITED STATES INSTITUTE OF PEACE

### Notice Regarding Board of Directors Meetings

**AGENCY:** United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

**ACTION:** Announcement of meeting.

**SUMMARY:** USIP announces the next meeting of the Board of Directors.

**DATES:** Friday, January 27, 2023 (9:00 a.m.–12:30 p.m.).

The next meeting of the Board of Directors will be held April 28, 2023.

**ADDRESSES:** 2301 Constitution Avenue NW, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Megan O'Hare, 202–429–4144, *mohare@usip.gov*.

**SUPPLEMENTARY INFORMATION:** Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

*Authority:* 22 U.S.C. 4605(h)(3).

Dated: January 19, 2023.

**Rebecca Fernandes,**

*Director of Accounting.*

[FR Doc. 2023–01461 Filed 1–24–23; 8:45 am]

**BILLING CODE 2810–03–P**

[1] 87 FR 74468 (Dec. 5, 2022).

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs, Veterans Health Administration.

**ACTION:** Notice of a Modified System of Records.

**SUMMARY:** Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is modifying the system of records entitled ''Voluntary Service Records—VA'' (57VA10B2A). This system is used for training, compliance, work assignment, tracking the number of regularly scheduled volunteers and occasional volunteers, to produce statistical and managerial reports on the number of hours and visits of all volunteers each month, and to present volunteers with certificates of appreciation for service.

**DATES:** Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service (005R1A), 810 Vermont Avenue NW, Washington, DC 20420. Comments should indicate that they are submitted in response to ''Voluntary Service Records—VA (57VA10B2A)''. Comments received will be available at regulations.gov for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Stephania Griffin, Veterans Health Administration Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** VA is modifying the system by revising the System Number; System Location; System Manager; Purpose of the System; Categories of Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; Policies and Practices for Retrievability of Records Policies; Practices for Retention and Disposal of Records; Physical, Procedural, and Administrative Safeguards; Records Access Procedure; Contesting Record Procedure; and Notification Procedure. VA is republishing the system notice in its entirety.

The System Number will be changed from 57VA10B2A to 57VA10 to reflect the current Veterans Health Administration organizational routing symbol.

The System Location is being updated to remove references to servers located at the Austin Information Technology Center, 1615 Woodward Street, Austin, Texas 78772. This section will include that the system is in the Microsoft Government Community Cloud (GCC), a government-authorized cloud-service provider, with Microsoft Global Foundation Services (GFS) Datacenters in Boydton, Virginia; Des Moines, Iowa; Dallas, Texas; and Phoenix, Arizona. For security reasons, Microsoft does not disclose the physical location of the data centers. For more information, please refer to the Joint Authorization Board (JAB) Federal Risk and Authorization Management Program's (FedRAMP) Authority to Operate (ATO) for Microsoft Dynamics Customer Relationship Management (CRM).

The System Manager is being updated to replace Director, Voluntary Service Office, with Director, VA Center for Development and Civic Engagement. Being removed is Technatomy Contractor, Jay Singh, VHA Oakland Office of Information Field Office, 1301 Clay Street, Suite 1350N, Oakland, California 94612. This section will include Stefano Masi, Veteran Relationship Management Product Line Manager, 555 Willard Ave., Newington, CT 06111.

The Purpose of the System is being modified to include training, compliance and work assignment.

The Record Source Categories is being modified to change 24VA10P2 to 24VA10A7.

The following routine use is added and will be routine use #10, Data Breach Response and Remediation, For Another Agency: To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

The following routine use is added and will be routine use #11, Parent or Guardian of Minor Volunteer: To the parent or legal guardian of a minor volunteer. This routine use will allow VA to share information on the work schedule for summer student volunteers with their parents or legal guardians.

Policies and Practices for Storage of Records and Physical, Procedural, and Administrative Safeguards are being modified to replace Austin, Texas with the Microsoft GCC.

Policies and Practices for Retrievability of Records is being modified to replace VistA patient files, with Occupational Health Record-Keeping System.

Policies and Practices for Retention and Disposal of Records is being modified to remove: 1. The individual volunteer's record of service is maintained by the VA health care facility, as long as he or she is living and actively participating in the VA Voluntary Service (VAVS) program. VAVS maintains minimum information on all volunteers indefinitely. These minimum records include the volunteer's name, address, date of birth, telephone number, next of kin information, assignments worked, hours and years of service, and last award received.

2. Depending on the record medium, records are destroyed by either shredding or degaussing. Summary reports and other output reports are destroyed when no longer needed for current operation. Regardless of record medium, no records will be retired to a Federal records center reports and other output reports are destroyed when no longer needed for current operation. Regardless of record medium, no records will be retired to a Federal records center.

This section will now reflect the following: Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, VHA RCS 10–1, Item Number 3020.10–3020.11.

The Record Access Procedure, Contesting Record Procedure and Notification Procedure have been modified to reflect standard language across VA systems of records.

The Report of Intent to Modify a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

**Signing Authority**

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on December 13, 2022 for publication.

Dated: January 20, 2023.

**Amy L. Rose,**

*Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.*

**SYSTEM NAME AND NUMBER:**

''Voluntary Service Records—VA'' (57VA10).

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Records are maintained at each of the VA health care facilities and in the Center for Development and Civic Engagement Portal (CDCEP). Active records are retained at the VA health care facility listed in Appendix 1 where the individual has volunteered to assist the administrative and professional personnel and in the CDCEP. Basic information for all inactive records is retained at the facility where the volunteer worked and in the CDCEP. CDCEP is a web-based volunteer management system currently located in the Microsoft Government Community Cloud (GCC), a government-authorized cloud-service provider, with Microsoft Global Foundation Services (GFS) Datacenters in Boydton, Virginia; Des Moines, Iowa; Dallas, Texas; and Phoenix, Arizona. For security reasons, Microsoft does not disclose the physical location of the data centers. For more information, please refer to the Joint Authorization Board (JAB) Federal Risk and Authorization Management Program's (FedRAMP) Authority to Operate (ATO) for Microsoft Dynamics Customer Relationship Management (CRM).

**SYSTEM MANAGER(S):**

Official responsible for policies and procedures: Director, VA Center for Development and Civic Engagement (CDCE), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone number 202–461–7300 (this is not a toll-free number). Official maintaining the system: Veteran Relationship Management Product Line Manager, 555 Willard Ave., Newington, CT 06111.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

38 U.S.C. 513.

**PURPOSE(S) OF THE SYSTEM:**

This system of records is used for training, compliance, work assignment, tracking the number of regularly scheduled volunteers and occasional volunteers, to produce statistical and managerial reports on the number of hours and visits of all volunteers each month, and to present volunteers with certificates of appreciation for service.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

These records include information on all volunteers (*i.e.,* regularly scheduled volunteers, occasional volunteers, student volunteers), including but not limited to, non-affiliated and members of voluntary service organizations, such as welfare, service, Veterans, fraternal, religious, civic, industrial, labor, and social groups or clubs, which voluntarily offer the services of their organizations and/or individuals to assist with the provision of care to patients, either directly or indirectly, through VA Voluntary Service under 38 U.S.C. 513.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records may include personal information, such as name, address, phone number, email address, date of birth, and volunteer date in a VA health care facility, as provided by the volunteer on VA Form 10–7055, ''Application for Voluntary Service;'' information relating to the individual membership in service organizations, qualifications, restrictions and preferences of duty and availability to schedule time of service; training records pertaining to the volunteer's service will also be maintained for all active volunteers at the facility where the volunteer works; medical records of active volunteers will be maintained in the facility's Employee Health office; fingerprint and background investigation records will be maintained by the local facility's office that handles those investigations.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by the volunteer, their family, civic and service organization, ''Patient Medical Records—VA'' (24VA10A7), and CDCE/VA Voluntary Service (VAVS) at the VA health care facility where the volunteer worked.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To the extent that records contained in the system include individually-identifiable patient information protected by 38 U.S.C. 7332, that information cannot be disclosed under a routine use unless there is also specific disclosure authority in 38 U.S.C. 7332.

1. *Law Enforcement:* To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

2. *Nonprofits, for RONA:* To a nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, provided that the disclosure is limited the names and addresses of present or former members of the armed services or their beneficiaries, the records will not be used for any purpose other than that stated in the request and the agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

3. *Volunteer Administration:* To confirm volunteer service, duty schedule, and assignments to service organizations, Bureau of Unemployment, insurance firms, office of personnel of the individual's fulltime employment; to assist in the development of VA history of the volunteer and their assignments; and to confirm voluntary hours for on-the job accidents, and for recognition awards.

4. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

5. *NARA:* To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

6. *DOJ, Litigation, Administrative Proceeding:* To the Department of Justice (DoJ), or in a proceeding before

a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in their official capacity;

(c) Any VA employee in their individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

7. *Contractors:* To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

8. *Federal Agencies, Fraud and Abuse:* To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

9. *Data Breach Response and Remediation, for VA:* To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. *Parent or Guardian of Minor Volunteer:* VA may disclose information from this system to the parent or legal guardian of a minor volunteer.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are maintained in the Microsoft GCC, a government-authorized cloud-service provider, with Microsoft GFS Datacenters in Boydton, Virginia; Des Moines, Iowa; Dallas, Texas; and Phoenix, Arizona. For security reasons, Microsoft does not disclose the physical location of the data centers. For more information, please refer to the JAB FedRAMP ATO for Microsoft Dynamics CRM. Paper records for all active volunteers are maintained in locked file cabinets at the individual VA facilities where the volunteer has donated time. Computer records containing basic information, such as name, address, date of birth, volunteer assignments, hours/years volunteered, and award information are retained for all volunteers, either active or inactive, at the VA facility where the volunteer worked.

**POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:**

Records in this system are retrieved by name and unique identification numbers within the VA's CDCEP and are cross-referenced under the organization(s) they represent. Health records in this system are retrieved by name and full Social Security number in the Occupational Health Record—Keeping System but are not retrievable through CDCEP.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, VHA RCS 10–1, Item Number 3020.10–3020.11.

**PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:**

1. Access to VA working space and medical record storage areas and the servers and storage in the GCC is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service. Volunteer records containing sensitive medical record files are stored in separate locked files.

2. Strict control measures are enforced to ensure that access to and disclosure of all records including electronic files and volunteer specific data elements stored in the CDCEP are limited to CDCE/VAVS employees whose official duties warrant access to those files. Access to the VA network is protected by the usage of the personal identity verification ''PIV.'' Once on the VA network, separate ID and password credentials are required to gain access to the CDCEP servers and/or databases. Access to the servers and/or databases is granted to only a limited number of system administrators and database administrators. Employees are required to sign a user access agreement acknowledging their knowledge of confidentiality requirements, and all employees receive annual training on information security. Access is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security measures.

3. Online data resides on servers and storage in the GCC that are highly secured.

4. Any sensitive information that may be downloaded or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal.

5. All new CDCE/VAVS employees receive initial information security training, and refresher training is provided to all employees on an annual basis.

**RECORD ACCESS PROCEDURE:**

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above, or email *VHA15CDCEStaff@va.gov,* or inquire in person at the VA health care facility where their voluntary service was accomplished. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

**CONTESTING RECORD PROCEDURE:**

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above, or email *VHA15CDCEStaff@va.gov* or inquire in person at the VA health care facility where their voluntary service was accomplished. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

**NOTIFICATION PROCEDURE:**

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

42 FR 6032 (February 1, 1977); 66 FR 6764 (January 22, 2001); 74 FR 17555 (April 15, 2009); 81 FR 59271 (August 29, 2016).

[FR Doc. 2023–01437 Filed 1–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Chief Human Capital Officer, Department of Veterans Affairs (VA).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is modifying the system of records entitled, ''Employee Medical File System Records (Title 38)–VA'' (08VA05). This system of records supports the Department by tracking employee health. The records are maintained for a variety of purposes, including: meeting the mandates of law, Executive Orders or regulations (*e.g.,* Department of Labor Occupational Safety and Health Administration, Department of Justice, National Archives and Records Administration, and Office of Workers' Compensation Programs (OWCP) regulations.

**DATES:** Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Employee Medical File System Records (Title 38)–VA'' (08VA05). Comments received will be available at regulations.gov for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Matt Gentil, Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; *matthew.gentil@va.gov;* telephone 202–632–4878 (Note: this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The System has been updated to include the following:

- Update records located in VA National Data Centers and VA Information Technology (IT) systems in VA Central Office.
- Update the System Manager position title to ''The Chief Human Capital Officer (05).''
- Update the Authority for Maintenance of the System to add Executive Orders 12196 and correct the 38 U.S.C. citations.
- Update the Purpose of the System to reflect the purposes outlined in OPM/GOVT–10, Employee Medical File System Records for title 5 federal employees. The Purpose of the System includes a variety of purposes for which the records maintained are used.
- Update Categories of Individuals Covered by the System to correct all of the legal citations for referenced 38 U.S.C. sections and add title 38 Hybrid employees.
- Update Categories of Records in the System to add ''(6) Other records, forms or reports containing health information for compliance with vaccination mandates for federal employees'' as a new category of records to address the collection of health information required to meet Executive Order 14043, ''Requiring Coronavirus Disease 2019 Vaccination for Federal Employees.''
- Update Record Source Categories to add VA IT systems as a source of information.
- Update Routine Use 27–28 to align with OPM/GOVT–10.
- Update Routine Uses #27 to state, ''VA may disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.''
- Update Routine Use #28 to state, ''VA may disclose information to evaluate and report on the effectiveness of health and wellness programs by agency staff or third parties under contract with the agency to conduct such evaluations.''
- Update The Policies and Practices for Storage of Records to replace the reference to information in the Decentralized Hospital Computer Program (DHCP) system with ''Electronic Records are maintained in VA IT systems.''
- Update The Policies and Practices for Retrieval of Records to add medical record number and, employee's VA email address.
- Update The Policies and Practices for Retention and Disposal of Records to indicate that ''Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, VA RCS 10–1, Item 3015, excluding Item 3015.9.''
- Update The Administrative, Technical, and Physical Safeguards section to remove all reference to DHCP and replace it with VA IT systems.

Update Record Access Procedures to clarify where requests should be submitted and to replace the need for the Social Security Number with only ''last four of social security number'' to allow for adequate identification while protecting individual's information. Notification procedures is being revised to also replace the need for the Social Security Number with only ''last four of social security number.'' VA is republishing the system notice in its entirety.

### Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on December 13, 2022 for publication.

Dated: January 20, 2023.

**Amy L. Rose,**

*Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.*

**SYSTEM NAME AND NUMBER:**

Employee Medical File System Records (Title 38)—VA, (08VA05).

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

For current employees, records are located in VA medical, personnel, dispensary, health, safety or other designated offices at Central Office and field facilities (see Appendix 1); in VA National Data Centers; in VA information technology (IT) systems within VA Central Office; with another agency providing such services for the VA; or with private sector contractors.

For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal records centers operated by the National Archives and Records Administration (NARA). Paper record abstract information is stored in automated storage media records that are maintained at the health care facilities.

**SYSTEM MANAGER(S):**

The Chief Human Capital Officer (05), Tracey Therit, VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420, phone: 202–461–0235, email: *Tracey.Therit@va.gov.*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Orders 12196 and 12564; Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Public Law 100–71, Section 503, 101 Stat. 468 (1987); 38 U.S.C, Chapter 3, §§ 501(a)–(b); Chapter 73 and Chapter 75, § 7802.

**PURPOSE(S) OF THE SYSTEM:**

Records in this system of records are maintained for the following purposes:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive Order, or regulations (*e.g.,* the Department of Labor's Occupational Safety and Health Administration (OSHA) and Office of Workers' Compensation Program regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the employee/individual.

e. To provide a record of communications among members of the health care team who contribute to the employee/individual's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically related employment decisions affecting the subject of the records (*e.g.,* in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the Office of Workers' Compensation Program and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

l. To facilitate communication among members of an on-site health and wellness program and to the employee/individual participating in the program.

m. To enable evaluation of the effectiveness of on-site health and wellness programs.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The following categories of individuals are covered by this system: current or former VA employees appointed under title 38 includes employees appointed to occupations identified in 38 U.S.C. 7306, 7401(1), and 7401(3); and employees in those occupations who are appointed under 38 U.S.C. 7405 and 7406.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records maintained in this system include: (1) Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed; (2) Medical records, forms, and reports completed during employment as a condition of employment, either by the VA or by another agency, State or local government entity, or a private sector entity under contract to the VA; (3) Records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the VA (*e.g.,* by the VA Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and lists of who has been tested, who failed to report for testing, and related documents. Records maintained by a VA dispensary are included in the system only when they are the result of a condition of employment or related to an on-the-job occurrence. (4) Files containing reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file, maintained by the Department of Labor's Office of Workers' Compensation Program (OWCP) is part of that agency's system of records and not covered by this notice.) (5) All other medical records, forms, and reports created on an employee during his or her period of employment, including records retained on a short term/temporary basis (*i.e.,* those designated to be retained only while the employee is with the VA) and records designated for long-term retention (*i.e.,* those retained for the employee's duration of Federal service and for some period of time thereafter). (6) Records resulting from participation in agency-sponsored health promotion and wellness activities, including health risk appraisals, biometric testing, health coaching, disease management, behavioral management, preventive services, fitness programs, and any other activities that could be considered part of a comprehensive worksite health and wellness program.

**RECORD SOURCE CATEGORIES:**

Records in this system are obtained from: the individual to whom the records pertain, VA employee health unit staff, Federal and private sector medical practitioners and treatment facilities, supervisors/managers and other VA officials, testimony of witness, and other VA records and VA IT systems.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

1. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

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

3. To another Federal agency or Federal entity, when VA determines

that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component there of;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. To the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. To the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. To the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. VA may disclose information to Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

13. VA may disclose information to survey teams of the Joint Commission on Accreditation of Healthcare Organizations, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, as relevant and necessary for the purpose of program review or the seeking of accreditation or certification.

14. VA may disclose information to disclose to health insurance carriers contracting with the OPM to provide a health benefits plan under the Federal Employee Health Benefits Program, information necessary to verify eligibility for payment of a claim for health benefits or to carry out the coordination of audit of benefit provisions of such contracts.

15. VA may disclose information to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (*e.g.,* epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

16. VA may disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

17. VA may disclose information when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

18. VA may disclose information to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under: (a) Medical evaluation (formerly Fitness for Duty) examinations procedures, or (b) agency-filed disability retirement procedures.

19. VA may disclose information to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force.

20. VA may disclose information to a Federal agency, in response to its request or at the initiation of the VA, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the other agency, or the lawful statutory, administrative or investigative purpose of the agency to the extent that the information is relevant and necessary to the other agency's decision on the matter.

21. VA may disclose information to any Federal, State, or local government agency, in response to its request or at the initiation of the VA, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose as it relates to the conduct of job-related epidemiological research or the assurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

22. VA may disclose to officials of labor organizations recognized under 5 U.S.C. Chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the record access rules

of the OSHA, Department of Labor, and subject to the limitations of 29 CFR 1910.20(e)(2)(iii)(B).

23. VA may disclose information to a Federal Agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform a Federal Agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

24. VA may disclose information to a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

25. VA may disclose information to the National Practitioner Data Bank at the time of hiring or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention, or termination of the applicant or employee.

26. VA may disclose information to the National Practitioner Data Bank or a state licensing board in the state in which a practitioner is licensed, in which the VA facility is located, or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner that was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual; (2) a final decision that relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist, either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

27. VA may disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

28. VA may disclose information to evaluate and report on the effectiveness of health and wellness programs by agency staff or third parties under contract with the agency to conduct such evaluations.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are stored in paper folders, microfiche, magnetic discs, magnetic tape, and on file cards, X-rays, or other medical reports and forms. These records are stored in VA medical, personnel, dispensary, health, safety or other designated offices at Central Office and field facilities. Electronic records are maintained in VA IT systems.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrieved by the employee/individual's name, date of birth, medical record number, employee/individual's VA email address, last four of the employee/individual's social security number, or any combination of those identifiers.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, VA RCS 10–1, Item 3015, excluding Item 3015.9.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Paper records are stored in locked file cabinets or locked rooms. Generally, file areas are locked after normal duty hours. Automated records are protected by restricted access procedures and audit trails. Access to Employee Medical File System records is strictly limited to VA or contractor officials with a bona fide need for access to the records. Strict control measures are enforced to ensure that access to and disclosure from these records are limited to a ''need-to-know basis.'' In VA Central Office these paper records are maintained in staffed rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel. Access to VA computer rooms within VA facilities is generally limited by appropriate locking devices and restricted to authorized VA employees/individuals and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in VA National Data Centers and VA IT systems may be accessed by authorized VA employees/individuals. Access to file information is controlled at two levels; the system recognizes authorized employees/individuals by a series of individually unique passwords/codes as a part of each message, and the employees/individuals are limited to only that information in the file which is needed in the performance of their official duties. Drug testing records will be maintained in accordance with the Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Public Law No. 100–71, Section 503, 101 Stat. 468 (1987). Contractor laboratories are subject to the same restrictions as VA employees/individuals.

**RECORD ACCESS PROCEDURES:**

Individuals requesting access to and contesting the contents of records must submit to the Human Resources Management Office at the facility where last employed the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) last four of social security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend records in this system pertaining to them should contact the Human Resources Management Office at the

facility where last employed in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

**NOTIFICATION PROCEDURES:**

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

Last full publication was prior to 1995.

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