AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 84 May 2, 2023

Pages 27395–27654

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 88, No. 84

Tuesday, May 2, 2023

Agency for Healthcare Research and Quality
NOTICES
Meetings, 27517

Agricultural Marketing Service
PROPOSED RULES
Beef Promotion and Research Order:
Reapportionment and Technical Amendment, 27415–27418
NOTICES
Requests for Nominations:
Advisory Committee on Universal Cotton Standards, 27431

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Federal Crop Insurance Corporation
See Risk Management Agency
See Rural Business-Cooperative Service
See Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27431–27432

Alcohol and Tobacco Tax and Trade Bureau
PROPOSED RULES
Establishment of Viticultural Area:
Crystal Springs of Napa Valley, 27420–27421

Bureau of Safety and Environmental Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Permit to Drill, Supplemental Information Sheet, and All Supporting Documentation, 27528–27529

Bureau of the Fiscal Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
TreasuryDirect System, 27585

Centers for Medicare & Medicaid Services
RULES
Medicare Program:
Extending the Medicare Diabetes Prevention Program's Expanded Model Emergency Policy through CY 2023, 27413–27414
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27517–27518

Civil Rights Commission
NOTICES
Meetings:
Utah Advisory Committee, 27442–27443

Coast Guard
RULES
Safety Zones:
Potomac River, between Charles County, MD, and King George County, VA, 27407–27410
South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0517, Offshore Rhode Island, Atlantic Ocean, 27402–27407
PROPOSED RULES
Safety Zone:
Atlantic Ocean, Key West, FL, 27421–27423

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Corporation for National and Community Service
PROPOSED RULES
AmeriCorps Statement of Organization, 27423–27427

Defense Department
See Navy Department

Education Department
RULES
Final Priorities, Requirements, and Definitions:
State-Tribal Education Partnership Program, 27410–27413
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Formula Grant Electronic Application System for Indian Education, 27495
Applications for New Awards:
State Tribal Education Partnership Grant Program, 27489–27495

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Guidance:
Packaging, Transportation, Receipt, Management, Short-Term and Long-Term Storage of Elemental Mercury and Request for Comment; Interim, 27495–27498

Environmental Protection Agency
NOTICES
Draft National Strategy to Prevent Plastic Pollution, 27502–27504

Equal Employment Opportunity Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27504–27509

Farm Service Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Power of Attorney, 27432

Federal Aviation Administration
RULES
Procedures for Transportation Workplace Drug and Alcohol Testing Programs:
Addition of Oral Fluid Specimen Testing for Drugs, 27596–27653
NOTICES
Airport Property:
Pueblo Memorial Airport, Pueblo, CO, 27555

Federal Crop Insurance Corporation
NOTICES
Funding Availability:
Additional Payment to Approved Insurance Providers, 27433–27434

Federal Deposit Insurance Corporation
NOTICES
Privacy Act; Systems of Records, 27509–27511

Federal Energy Regulatory Commission
NOTICES
Application:
Green Mountain Power Corp., 27499–27500
Combined Filings, 27498–27499, 27501–27502
Environmental Assessments; Availability, etc.:
Appalachian Power Co., 27498
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Stanton Battery Energy Storage, LLC, 27500
Records Governing Off-the-Record Communications, 27500–27501

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27555–27559

Federal Maritime Commission
NOTICES
Filing of Complaint and Assignment:
Samsung Electronics America, Inc. v. SM Line Corp., 27511–27512

Federal Motor Carrier Safety Administration
RULES
Procedures for Transportation Workplace Drug and Alcohol Testing Programs:
Addition of Oral Fluid Specimen Testing for Drugs, 27596–27653
NOTICES
Meetings:
Women of Trucking Advisory Board, 27559–27560

Federal Railroad Administration
RULES
Procedures for Transportation Workplace Drug and Alcohol Testing Programs:
Addition of Oral Fluid Specimen Testing for Drugs, 27596–27653
NOTICES
Funding Opportunity:
Rail Research and Development Center of Excellence, 27560–27570
Safety Advisory:
Accident Mitigation and Train Length; 2023-03, 27570–27573

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 27512
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 27512–27513

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27513–27517

Federal Transit Administration
RULES
Procedures for Transportation Workplace Drug and Alcohol Testing Programs:
Addition of Oral Fluid Specimen Testing for Drugs, 27596–27653

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Status for Black-Capped Petrel with a Section 4(d) Rule, 27427–27430

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Identity for Freedom of Information Act and Privacy Act Requests, 27523
Perceptions of Prescription Drug Products with Medication Tracking Capabilities, 27518–27521
Guidance:
A Risk-Based Approach to Monitoring of Clinical Investigations—Questions and Answers; Correction, 27521
Meetings:
Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing Approaches; Workshop; Correction, 27522
Request for Information:
Methodological Challenges Related to Patient Experience Data, 27521–27522

Foreign Assets Control Office
NOTICES
Sanctions Action, 27585–27587

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Public Housing Capital Fund Amendments to the Annual Contributions Contract, 27525–27526

Interior Department
See Bureau of Safety and Environmental Enforcement

See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27587–27590
Meetings:
Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee, 27588–27589

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Advance Notification of Sunset Review, 27443–27444
Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 27444–27445
Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 27445–27449
Rescission of Administrative Reviews, 27449–27451
Request for Information:
Climate Adaptation Export Competitiveness, 27552–27555

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and Vietnam, 27529–27531
Pneumatic Off-the-Road Tires from India, 27531

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pre-Implementation Planning Checklist Report for State Unemployment Insurance Information Technology Modernization Projects, 27531–27532

Land Management Bureau
NOTICES
Meetings:
Southeast Oregon Resource Advisory Council, 27526–27527

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Information to Determine Seamen's Reemployment Rights—National Emergency, 27580–27581
Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel:
Atoti (Sail), 27573–27574
Cool Breeze (Motor), 27574–27575
Hana Hou (Motor), 27578–27579
Honest Tune (Motor), 27576–27577
Knot-a-Care (Sail), 27583–27584
Liberty (Motor), 27577–27578
Obsidian (Motor), 27575–27576
Running Higher (Sail), 27579–27580
Southern Cross (Motor), 27582–27583
Southern Star (Sail), 27581–27582
Spirito di Venezia (Motor), 27584–27585

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 27524
National Institute on Aging, 27523–27524

National Oceanic and Atmospheric Administration
NOTICES
Endangered and Threatened Species:
Initiation of a 5-Year Review for the Taiwanese Humpback Dolphin, 27451–27452
Meetings:
Council Coordination Committee, 27488
Permits; Applications, Issuances, etc.:
Marine Mammals; File No. 26939, 27451
Taking or Importing of Marine Mammals:
Construction Associated with the Murray St. Bridge Seismic Retrofit Project in Santa Cruz, CA, 27452–27462
Construction of the Maryland Offshore Wind Project Offshore of Maryland, 27463–27464
Port of Nome Modification Project in Nome, AK, 27464–27487

National Park Service
NOTICES
Official Trail Marker for National Water Trails, 27527–27528

Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27488–27489

Nuclear Regulatory Commission
RULES
List of Approved Spent Fuel Storage Casks:
TN Americas, LLC, NUHOMS EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042, Amendment No. 3, 27397–27402
PROPOSED RULES
List of Approved Spent Fuel Storage Casks:
TN Americas LLC NUHOMS EOS Dry Spent Fuel Storage System Certificate of Compliance No. 1042, Amendment No. 3, 27418–27420
NOTICES
Environmental Assessments; Availability, etc.:
SHINE Technologies, LLC; SHINE Medical Isotope Production Facility, 27532–27534

Personnel Management Office
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 27534

Postal Regulatory Commission
NOTICES
New Postal Products, 27535

Presidential Documents
PROCLAMATIONS
Special Observances:
Workers Memorial Day (Proc. 10558), 27395–27396

Risk Management Agency
NOTICES
Funding Availability:
Additional Payment to Approved Insurance Providers, 27433–27434

Rural Business-Cooperative Service
NOTICES
Funding Opportunity:
Delta Health Care Services Grant Program for Fiscal Year 2023, 27434–27441

Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27441–27442

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27548–27549
Application:
Total Fund Solution and Cromwell Investment Advisors, LLC, 27542–27543
Self-Regulatory Organizations; Proposed Rule Changes:
ICE Clear Europe, Ltd., 27539–27542
MIAX Emerald, LLC, 27535–27539
Nasdaq ISE, LLC, 27545–27548
Nasdaq PHLX, LLC, 27543–27545, 27549–27551

Small Business Administration
NOTICES
Disaster Declaration:
Hoopa Valley Tribe; Public Assistance Only, 27551–27552

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition:
Life Cycles: The Materials of Contemporary Design, 27552

Trade and Development Agency
NOTICES
Request for Information:
Climate Adaptation Export Competitiveness, 27552–27555

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
RULES
Procedures for Transportation Workplace Drug and Alcohol Testing Programs:
Addition of Oral Fluid Specimen Testing for Drugs, 27596–27653

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Law Enforcement/Federal Air Marshal Service Physical and Mental Health Certification, 27525
Transportation Security Officer Medical Questionnaire, 27524–27525

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Bureau of the Fiscal Service
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27591–27592
Sanctions Action, 27590–27594

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 27596–27653
Transportation Department, Federal Motor Carrier Safety Administration, 27596–27653
Transportation Department, Federal Railroad Administration, 27596–27653
Transportation Department, Federal Transit Administration, 27596–27653
Transportation Department, 27596–27653

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10558.....27395

7 CFR

Proposed Rules:

1260.....27415

10 CFR

72.....27397

Proposed Rules:

72.....27418

14 CFR

120.....27596

27 CFR

Proposed Rules:

9.....27420

33 CFR

147.....27402

165.....27407

Proposed Rules:

165.....27421

34 CFR

Ch. II.....27410

42 CFR

410.....27413

45 CFR

Proposed Rules:

2500.....27423

49 CFR

40.....27596

219.....27596

240.....27596

242.....27596

382.....27596

655.....27596

50 CFR

Proposed Rules:

17.....27427

Federal Register
Vol. 88, No. 84
Tuesday, May 2, 2023

Presidential Documents

Title 3—

The President

Proclamation 10558 of April 27, 2023

Workers Memorial Day, 2023

By the President of the United States of America

A Proclamation

A record 160 million Americans get up and go to work every day to provide for their families, build their communities, and earn a piece of the American Dream. But too many are exposed to unsafe working conditions, injured, or even killed in preventable accidents on the job. And millions of firefighters, police officers, and other first responders put their lives on the line as a matter of course to keep the rest of us safe. We need to have their backs. On Workers Memorial Day, we honor every American worker who has sacrificed their own life or well-being; we stand with the unions that fight for them every day; and we recommit to protecting the fundamental right to a safe and healthy workplace.

I ran for office to restore the backbone of America—the middle class—and I am proud to be the most pro-labor President in history. The middle class built this country, and union workers built the middle class. Nearly every law protecting workers' rights passed because unions fought for it. That includes the Occupational Safety and Health Act, which took effect 51 years ago today, laying the groundwork for foundational health, safety, and whistleblower protections that continue to protect workers nationwide.

My Administration has built on that legacy from the start, securing $200 million in American Rescue Plan funding to help keep workers safe and guarantee paid sick leave during the COVID–19 pandemic. We protected pensions for millions of workers and retirees so that hardworking Americans can enjoy the healthy and stable retirement they worked their whole lives to secure. The historic infrastructure, manufacturing, and clean energy laws that I signed as part of our Investing in America agenda are spurring billions of dollars in private investments and helping to create millions of good-paying jobs while requiring strong labor practices like prevailing wages, expanding Registered Apprenticeships, and protecting benefits for coal miners with black lung disease. Throughout, we have stood against union busting and supported striking workers, who fight for better pay and safer conditions. We have cracked down on wage theft and worker misclassification so employers cannot avoid paying fair wages or full benefits. We are making it easier for workers to report abuses and unsafe working conditions, even if they are undocumented—improving safety, boosting pay, and raising standards for everyone.

At the same time, my Administration has strengthened workplace safety enforcement and training, hiring hundreds of new workplace inspectors and increasing site visits by 30 percent. We launched a program to inspect workplaces for extreme heat, which can harm construction, farm, factory, warehouse, delivery, and other workers. We have invested more than $100 million in training farm workers to avoid injuries. And we have fought for first responders by cracking down on toxic PFAS—the so-called ''forever chemicals'' that have been used for years to produce firefighting equipment and fire suppression agents, making firefighters sick—and funding research into PFAS alternatives. I also signed bills qualifying more than 10,000 Federal firefighters for critical workers' compensation and extending tax-free retirement benefits to firefighters permanently disabled on the job and to families

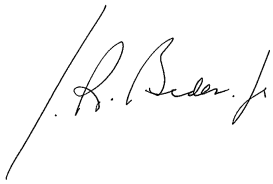
of late firefighters who faced trauma. My latest Budget would invest $430 million more to help Federal agencies promote safe worksites, protect benefits, increase penalties for labor violations, and end child labor for good. Our Administration has worked across the board to expand access to health care through the Affordable Care Act and Medicaid, saving millions of families $800 a year each on premiums. Today, more Americans have health insurance than ever before in our history.

We have more to do. For starters, the United States is still one of the only countries in the world that does not guarantee paid sick leave, forcing too many workers to have to choose between a paycheck and caring for a sick or injured loved one or for themselves. The Congress needs to pass sick days for all and a national paid leave program right away to change that.

A safe and healthy workplace is fundamental. In the United States of America, no one should have to risk their lives just to make a living. Today, we honor those workers who put it all on the line, and we keep their families in our hearts. We celebrate the whistleblowers and union organizers whose courage and persistence has saved countless lives, and we join them in standing up for all American workers, who are the best in the world.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 28, 2023, as Workers Memorial Day. I call upon all Americans to observe this day with appropriate service, community, and education programs and ceremonies in memory of those killed or injured due to unsafe working conditions.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of April, 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.



[FR Doc. 2023–09414
Filed 5–1–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register

Vol. 88, No. 84

Tuesday, May 2, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0050]

RIN 3150–AK93

List of Approved Spent Fuel Storage Casks: TN Americas LLC; NUHOMS® EOS Dry Spent Fuel Storage System; Certificate of Compliance No. 1042, Amendment No. 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 3 to Certificate of Compliance No. 1042. Amendment No. 3 revises the certificate of compliance to add three new heat load zone configurations, add a variable-lead thickness transfer cask, add ATRIUM 11 fuel as an allowable content, update the criticality evaluation, allow ultrasonic testing of the outer top cover plate weld, reduce the time limit for transfer of two heat load zone configurations, incorporate a method to determine new loading patterns, waive a fabrication pressure test requirement, and make conforming changes for consistency and terminology clarification. Amendment No. 3 also includes additional changes associated with consideration of severe weather, maintaining water in the annulus, and design changes to the Matrix Loading Crane.

DATES: This direct final rule is effective July 17, 2023, unless significant adverse comments are received by June 1, 2023. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2023–0050, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christian Jacobs, telephone: 301–415–6825, email: *Christian.Jacobs@nrc.gov* or Caylee Kenny, telephone: 301–415–7150, email: *Caylee.Kenny@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Discussion of Changes
V. Voluntary Consensus Standards
VI. Agreement State Compatibility
VII. Plain Writing
VIII. Environmental Assessment and Finding of No Significant Impact
IX. Paperwork Reduction Act Statement
X. Regulatory Flexibility Certification
XI. Regulatory Analysis
XII. Backfitting and Issue Finality
XIII. Congressional Review Act
XIV. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0050 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0050. Address questions about NRC dockets to Dawn Forder, *telephone:* 301–415–3407, *email: Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2023–0050 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should

inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 3 to Certificate of Compliance No. 1042 and does not include other aspects of the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on July 17, 2023. However, if the NRC receives any significant adverse comment on this direct final rule by June 1, 2023, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register** or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications (TS).

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, states that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [*sic:* 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 24, 2017 (82 FR 14987), that approved the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1042.

IV. Discussion of Changes

On March 31, 2021, TN Americas LLC submitted a request to the NRC to amend Certificate of Compliance No. 1042. TN Americas LLC supplemented its request on the following dates: June 23, 2021, August 4, 2021, September 3, 2021, October 22, 2021, November 30, 2021, February 25, 2022, June 7, 2022, June 29, 2022, September 30, 2022, October 31, 2022, November 14, 2022, and December 21, 2022. The applicant requested nine changes to the CoC in its initial submittal, and then requested three additional changes in later submittals.

Amendment No. 3 revises the certificate and compliance and technical specifications (TS) to make the following nine changes that were requested in the March 31, 2021, submittal:

- Add three new heat load zone configurations (HLZCs) No. 4, 5, and 6 for the EOS–89BTH Dry Shielded Canister (DSC). This change includes a revision to the maximum heat load of the of the EOS–89BTH DSC to 48.2 kW per DSC, and the maximum heat load for any single assembly to 1.7 kW. This revision reduces the minimum cooling time from two years to one year.
- Add a variable-lead thickness EOS–TC125 transfer cask with minimum and maximum values for thickness for use with the EOS–89BTH DSC to decrease the lead thickness from the previously analyzed design.
- Add ATRIUM 11 fuel as an allowable content in the EOS–89BTH DSC to allow offloading of pools with this fuel type. This change also reran the limiting GNF2 and ABB–10–C fuel type cases to reduce the statistical uncertainties and increase the enrichment limits.
- Update the criticality evaluation to allow ''short-loading'' configurations of Boiling Water Reactor fuel in the EOS–89BTH DSC with less than 89 fuel assemblies to increase the enrichment limits.
- Revise the TS to allow for phased array automated ultrasonic testing and utilize a single pass high amperage gas tungsten arc weld or multipass gas tungsten arc weld on the outer top cover plate. This change allows for the use of a single high amperage gas tungsten arc weld for a faster weld, resulting in less occupational exposure. This change also allows for the use of ultrasonic testing to verify the weld, which allows for more stringent weld examination.
- Revise the TS to reduce EOS–37PTH HLZCs 1 and 2 time limit for transfer to eight hours to make the time limit for transfer consistent among EOS–37PTH DSC's with transfer time limits.
- Incorporate a method to determine new loading patterns based on the maximum allowable heat load per DSC and per location specified in the TS. All HLZCs and time limits for transfer for the EOS–89BTH DSC transferred in the EOS–TC125 are moved from the TS to the Updated Final Safety Analysis Report (UFSAR) Chapter 2. This introduces the ability to allow flexibility in developing heat loading plans, in particular when performing full-core offload of shutdown cores.

• Waive the fabrication pressure test required in American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, NB–6000 for the EOS–37PTH and the EOS–89BTH DSCs with a single piece bottom forging.

• Make conforming changes to TS and USFAR for consistency among DSC types and terminology clarification.

In addition to the nine changes requested by applicant in their letter dated March 31, 2021, the applicant requested three additional scope changes in letters dated October 22, 2021, June 29, 2022, and September 30, 2022. The three additional scope changes include:

• UFSAR revisions associated with transfer cask lifting heights and consideration of severe weather. The revisions include a revised definition of ''Safe Condition and Forecast'' within the UFSAR to incorporate other forecasted weather conditions where the wind gust is expected to exceed the off-normal design condition operating wind limit of 44mph as defined in ASME NOG–1 with respect to the independent spent fuel storage installation (ISFSI) equipment Matrix Loading Crane (MX–LC).

• UFSAR revisions associated with maintaining water in the annulus by preventing and mitigating boiling occurring in the water in the TC/DSC annulus through demineralized water replenishment operations.

• Design changes to the MX–LC, including use of wheel chocks, to allow the MX–LC to be used as a single-failure-proof handing device to load DSCs into the HSM–MX above the maximum lifting height. This revision does not apply to the transfer and retrieval of the NUHOMS® 61BTH Type 2 DSC to and from the HSM–MX using the MX–LC, which has not been analyzed or approved for use under Amendment No. 3.

The changes to the aforementioned documents are identified with revisions bars in the margin of each document.

As documented in the preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 3 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' Therefore, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC determined that the amended NUHOMS® EOS Dry Spent Fuel Storage System cask design, when used under the conditions specified in the certificate of compliance, the TS, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System casks that meet the criteria of Amendment No. 3 to Certificate of Compliance No. 1042.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the NUHOMS® EOS Dry Spent Fuel Storage System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 3 to Certificate of Compliance No. 1042.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Amendment No. 3 revises the certificate of compliance to: add three new HLZCs for the EOS–89BTH DSC, with increased heat load up to 1.7 kW per fuel assembly, which reduces the minimum cooling time to one year; add a variable-lead thickness EOS–TC125 for transfer with the EOS–89BTH DSC; add ATRIUM 11 fuel as an allowable content in the EOS–89BTH DSC and rerun the limiting GNF2 and ABB–10–C cases to reduce the statistical uncertainties and increase the enrichment limits; update the criticality evaluation to allow short-loading the EOS–89BTH DSC with less than 89 fuel assemblies to increase the enrichment limits; revise the TS to allow for phased array automated ultrasonic testing and utilize a single pass high amperage gas tungsten arc weld or multipass gas tungsten arc weld on the outer top cover plate; revise the TS to reduce EOS–37PTH HLZC 1 and 2 time limit for

transfer to eight hours; incorporate a method to determine new loading patterns based on the maximum allowable heat load per DSC and per location specified in the TS and move all HLZCs and time limits for transfer for the EOS–89BTH DSC transferred in the EOS–TC125 from the TS to UFSAR Chapter 2; waive the fabrication pressure test requirement or the single bottom forging EOS–DSCs; and make minor changes to TS and USFAR for consistency among DSC types and terminology clarification. Additionally, Amendment No. 3 includes changes associated with consideration of severe weather; changes associated with maintaining water in the annulus; and design changes to the Matrix Loading Crane.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 3 tiers off the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 3 would remain well within the 10 CFR part 20 limits. The NRC has also determined that the design of the cask as modified by this rule will maintain confinement, shielding, and criticality control in the event of an accident. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 3 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System in accordance with the changes described in proposed Amendment No. 3 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 3 to Certificate of Compliance No. 1042 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042, Amendment No. 3,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN Americas LLC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if: (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 24, 2017 (82 FR 14987), the NRC issued an amendment to 10 CFR part 72 that approved the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System by adding it to the list of NRC-approved cask designs in § 72.214.

On March 31, 2021, and as supplemented on June 23, 2021, August 4, 2021, September 3, 2021, October 22, 2021, November 30, 2021, February 25,

2022, June 7, 2022, June 29, 2022, September 30, 2022, October 31, 2022, November 14, 2022, and December 21, 2022, TN Americas LLC submitted a request to amend the NUHOMS® EOS Dry Spent Fuel Storage System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 3 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System casks under the changes described in Amendment No. 3 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1042 for the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System, as currently listed in § 72.214. The revision consists of the changes in Amendment No. 3 previously described, as set forth in the revised certificate of compliance and TS.

Amendment No. 3 to Certificate of Compliance No. 1042 for the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System was initiated by TN Americas LLC and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 3 applies only to new casks fabricated and used under Amendment No. 3. These changes do not affect existing users of the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System, and current Amendment Nos. 0–2 continue to be effective for existing users. While current users of this storage system may comply with the new requirements in Amendment No. 3, this would be a voluntary decision on the part of current users.

For these reasons, Amendment No. 3 to Certificate of Compliance No. 1042 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No./ web link/**Federal Register** citation
Proposed certificate of compliance and proposed technical specifications	
Proposed certificate of compliance No. 1042 (Amendment No. 3)	ML23027A214.
Proposed Certificate of Compliance No. 1042 Appendix A: NUHOMS® EOS System Generic Technical Specifications Amendment 3.	ML23027A216.
Preliminary Safety Evaluation Report for the NUHOMS® EOS System: Certificate of Compliance No. 1042 Amendment No. 3.	ML23027A217.
Environmental Documents	
Environmental Assessment for Proposed Rule Entitled, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites.'' (1989).	ML051230231.
''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR Part 72 License and Certificate of Compliance Terms'' (2010).	ML100710441.
Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report (NUREG–2157, Volumes 1 and 2) (2014).	ML14198A440 (package).
''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' Final Rule (July 18, 1990)	55 FR 29181.
TN Americas, LLC, NUHOMS EOS Amendment 3 Application Documents	
TN Americas LLC Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 0 (March 31, 2021).	ML21102A281 (package).
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 1—Response to Request for Supplemental Information (June 23, 2021).	ML21174A231.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 2—Revised Response to OBS 4–6 (August 4, 2021).	ML21209A098.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 3—Revised Response to OBS 4–5 and Revised UFSAR Pages (September 3, 2021).	ML21246A136.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 3a—Amendment Scope Change (October 22, 2021).	ML21295A260.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 4—Response to Request for Additional Information (November 30, 2021).	ML21334A206.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 5—Response to Request for Additional Information (New Scope) and Revised Responses to Request for Additional Information (February 25, 2022).	ML22056A458.

Document	ADAMS Accession No./ web link/**Federal Register** citation
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 6—Revised Responses to Request for Additional Information (June 7, 2022).	ML22158A293.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 7—Clarification Regarding Annulus Temperatures During Vacuum Drying Operations (June 29, 2022).	ML22180A266.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 8—ASME NOG–1 Compliance and the Matrix Loading Crane (September 30, 2022).	ML22273A031.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 9—Clarifications Regarding Annulus Water, MX–LC Alignment, and Seismic Damping Values (October 31, 2022).	ML22304A217.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 10—Additional Information regarding ASME NOG–1 Compliance and the Matrix Loading Crane (November 14, 2022).	ML22318A205.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 11—Response to Request for Additional Information (New Scope Addition #3—ASME NOG–1 Exceptions) and Clarifications Regarding Annulus Water (December 21, 2022).	ML22355A219.
Other Documents	
Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites: Final Rule, dated July 18, 1990 ..	55 FR 29181.
List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042: Direct Final Rule, dated March 24, 2017.	82 FR 14987.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2023–0050. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2023–0050); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1042 to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1042.

Initial Certificate Effective Date: June 7, 2017.

Amendment Number 1 Effective Date: June 17, 2020.

Amendment Number 2 Effective Date: October 26, 2021.

Amendment Number 3 Effective Date: July 17, 2023.

SAR Submitted by: TN Americas LLC.

SAR Title: Final Safety Analysis Report for the NUHOMS® EOS Dry Spent Fuel Storage System.

Docket Number: 72–1042.

Certificate Expiration Date: June 7, 2037.

Model Number: EOS–37PTH, EOS–89BTH, 61BTH Type 2.

* * * * *

Dated: April 25, 2023.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Executive Director for Operations.

[FR Doc. 2023–09358 Filed 5–1–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2023–0073]

RIN 1625–AA00

Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing 13 temporary 500-meter safety zones around the construction of 12 wind turbine generators (WTGs) and one offshore substation (OSS) located in the South Fork Wind Farm (SFWF) project area within federal waters on the Outer Continental Shelf (OCS), specifically, in the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS–A 0517, approximately 16 nautical miles (NM) southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York. This action is necessary to provide for the safety of life, property, and the environment during the anticipated construction of each facility's monopile type foundation and subsequent installation of the WTGs turbines and OSS platform from May 1, 2023, to December 31, 2023. When enforced, only attending vessels and those vessels specifically authorized by the First Coast Guard District Commander or a designated

representative are permitted to enter or remain in the safety zones.

DATES: his rule is effective without actual notice from May 2, 2023, through 11:59 p.m. on December 31, 2023. For the purposes of enforcement, actual notice will be used from May 1, 2023, until May 2, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0073 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Craig Lapiejko, Waterways Management, at Coast Guard First District, telephone 617–603–8592, email *craig.d.lapiejko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM Bureau of Ocean Energy Management
CFR Code of Federal Regulations
DD Degrees Decimal
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OCS Outer Continental Shelf
OSS Offshore Substation
NAD 83 North American Datum of 1983
NM Nautical Mile
§ Section
SFWF South Fork Wind Farm
U.S.C. United States Code
WTG Wind Turbine Generator

II. Background, Purpose, and Legal Basis

On October 20, 2022, Orsted Offshore North America, an offshore wind farm developer, notified the Coast Guard that they plan to begin construction in May 2023 of facilities in the SFWF project area within federal waters on the OCS, specifically in the BOEM Renewable Energy Lease Area OCS–A 0517, approximately 16 NM southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York.

After determining that establishment of safety zones was necessary to provide for the safety of life, property, and the environment during the anticipated construction of the structures, on March 6, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean'' (88 FR 13745). There we explained the basis for the NPRM and invited comments on our proposed regulatory action related to the establishment of safety zones around the construction of 12 WTGs and one OSS located in the SFWF project area. On March 15, 2023, while the comment period was open, the Coast Guard published a NPRM correcting amendment titled ''Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean, Corrections'' (88 FR 15939), where we corrected a set of coordinates and four labeling plot locations. In total, 11 comments were received during the comment period that ended April 5, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The comment period for the NPRM associated with the SFWF project area ended on April 5, 2023, and the project is scheduled to begin on May 1, 2023. Thus, there is insufficient time to allow for 30-days before the rule becomes effective before the need to enforce this safety zone arises on May 1, 2023. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety risks associated with the extremely complex and unusually hazardous construction of these OCS facilities including hydraulic pile driving hammer operations, heavy lift operations, overhead cutting operations, potential falling debris, increased vessel traffic, and stationary barges in close proximity to the facilities and each other.

Based on these circumstances, the First Coast Guard District Commander has determined that establishment of 13 safety zones through rulemaking is warranted to ensure the safety of life, property, and the environment within a 500-meter radius of each of the 13 facilities during their construction.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority provided in 14 U.S.C. 544, 43 U.S.C. 1333, and Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3. As an implementing regulation of this authority, 33 CFR part 147 permits the establishment of safety zones for non-mineral energy resource permanent or temporary structures located on the OCS for the purpose of protecting life and property on the facilities, appurtenances and attending vessels, and on the adjacent waters within the safety zone (see 33 CFR 147.10). Accordingly, a safety zone established under 33 CFR part 147 may also include provisions to restrict, prevent, or control certain activities, including access by vessels or persons to maintain safety of life, property, and the environment.

IV. Discussion of Comments, Changes, and the Rule

As noted above, the Coast Guard received 11 public comments on our NPRM published March 6, 2023. Five of the 11 comments were supportive of the 13 temporary 500-meter safety zones and six commenters were opposed. Those opposing the NPRM communicated this opposition relative to wind farm construction in general and not necessarily in regard to our proposed rule and the enforcement of safety zones around this construction. We provide a detail discussion of each comment below.

Four commenters agreed with our proposed rule to create 13 temporary 500-meter safety zones during construction of these OCS facilities to protect life, property, and the environment.

One commenter generally supported the proposed rule and offered three additional recommendations for the Coast Guard to consider.

First, the commenter recommended we extend the safety zones 500-meters from the outer perimeter of attending, primary construction vessels once those vessels have achieved stationary position to conduct construction activities vice from the center point of the construction site. Although the Coast Guard could maximize the area of the safety zone by using our complete authorities within 33 CFR part 147, we believe that enforcement of the 500-meter zone from the center point of construction as a fixed geographic position is most appropriate for this particular offshore construction project. Using the center point of construction to base the location of the safety zone ensures there is a balance between ensuring safety and reducing impact on vessel transit.

Second, the commenter recommended we expand the definition of ''designated representative'' to include an appropriate employee or contractor of Orsted or South Fork Wind, LLC in order to facilitate navigation around and through the safety zones and enhance effective communications when safety zones are enforced. The Coast Guard believes that the definition of ''designated representative'' as cited in our proposed rule should be maintained. Based on the particular details of this offshore construction project including the short duration of the enforcement period (approximately 48 hours during active construction),

the more distant offshore location which sees less vessel traffic, and the types of large vessels that are most likely to navigate in the vicinity of the safety zones (commercial shipping, fishing, and tugs with tows), the Coast Guard finds no compelling need to broaden representative designation or the authority to permit passage through and around the enforced safety zone. Maintaining designation to Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the First Coast Guard District Commander in the enforcement of the safety zones will ensure consistent application.

Finally, the commenter suggested adding verbiage to indicate the safety zone would be enforceable once any construction vessel has achieved a stationary position. Although the Coast Guard could add this language based on our authorities within 33 CFR part 147, for this particular offshore construction project, the Coast Guard believes that an enforcement period correlated to a regularly updated date range published in the LNM is the more easily interpretated, reliable, and enforceable risk mitigation. Utilizing the stationary positioning of the construction vessel as the triggering event for enforcement also may create confusion for the impacted mariner because it could be difficult to discern which vessel is the ''construction vessel'' or if it is in fact stationary. Therefore, the Coast Guard intends to alleviate this ambiguity by utilizing time and date-based notifications of enforcement that correspond to the progression of construction.

Of the six opposing comments, three commenters expressed concerns about wind farm construction projects and stated their general opposition to all similar construction projects in the region. The Coast Guard acknowledges these comments and concerns. Coast Guard authorities direct us to assess the potential safety risks associated with such complex and unusually hazardous construction projects and require establishment of the safety zones to ensure the safety of life, property, and the environment.

One expressed a concern that a 500-meter temporary safety zone was too large. The Coast Guard disagrees. As we stated in our proposed rule, the construction of these OCS facilities presents many unusually hazardous conditions including hydraulic pile driving hammer operations, heavy lift operations, overhead cutting operations, and potential falling debris that may impact the area surrounding the construction site up to 500 meters. Additionally, the developer's construction plan describes increased vessel traffic and stationary barges operating in close proximity to the facilities and each other. Therefore, the Coast Guard believes that for this particular offshore project, a 500-meter temporary safety zone during the active construction of each structure is necessary to protect life, property, and the environment without posing significant impact on vessel transit.

Two commenters expressed their concern that the proposed safety zones will force vessels to transit around the area rather than by direct routes, leading to increased fuel consumption and risk in the instance of severe weather. The Coast Guard disagrees. Although the rule is effective, and enforceable, through December 31, 2023, each of the 13 temporary safety zones will be enforced individually as construction progresses from one structure location to the next with each lasting only approximately 48 hours. The Coast Guard believes that due to the short and individual duration of enforcement, this action will pose little impact on their voyage or the directness of their route. Additionally, vessels will be able to request permission to transit through the safety zone. Such requests will be considered on a case by-case basis and may be authorized by the First Coast Guard District Commander or a designated representative.

One commenter expressed their concern that these 13 temporary 500-meter safety zones would become permanent. The Coast Guard is establishing these 13 safety zones to be temporary in nature and only effective and enforceable through December 31, 2023. If the project is completed before December 31, 2023, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. Any desire by the Coast Guard to create permanent safety zones would require addition notice and comment rulemaking.

After considering the comments discussed above, the Coast Guard determined that no additional changes should be made to the regulatory text based on these comments. As written, the Coast Guard believes that the rule ensures consistency, sufficient notice, and improved safety while minimizing impact on vessel transit.

Due to previously discovered errors and changes in the scheduling, there are five changes to the regulatory text of this rule from the proposed rule in the NPRM. On March 15, 2023, the Coast Guard published a NPRM correcting amendment [1] where we discussed the five edits to the position table, including four labeling plot location errors and one error of the coordinates describing a labeling plot location. Specifically, we corrected the four labeling plot location errors by replacing AN07, AM09, AN10, and AP10 with AM05, AN05, AP05, and AN08, and corrected the coordinates describing AN06.

This rule establishes 13 temporary 500-meter safety zones around the construction of 12 WTGs and one OSS on the OCS from May 1, 2023, through 11:59 p.m. on December 31, 2023.

The 13 temporary safety zones will be enforced individually for a period lasting approximately 48 hours as construction progresses from one structure location to the next. The Coast Guard will make notice of each enforcement period via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency or hazardous condition. The Coast Guard is publishing this rulemaking to be effective, and enforceable, through December 31, 2023, to encompass any construction delays due to weather or other unforeseen circumstances. If the project is completed before December 31, 2023, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners.

Additional information about the construction process of the SFWF can be found at *https://www.boem.gov/renewable-energy/state-activities/south-fork.*

The 13 temporary 500-meter safety zones around the construction of 12 WTGs and one OSS are in the SFWF project area within federal waters on the OCS, specifically in the BOEM Renewable Energy Lease Area OCS–A 0517, approximately 16NM southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York.

The positions of each individual safety zone will be referred to using a unique alpha-numeric naming convention outlined in the ''Rhode Island and Massachusetts Structure Labeling Plot (West)''.[2]

Aligning with authorities under 33 CFR 147.15, the safety zones will include the area within 500-meters of

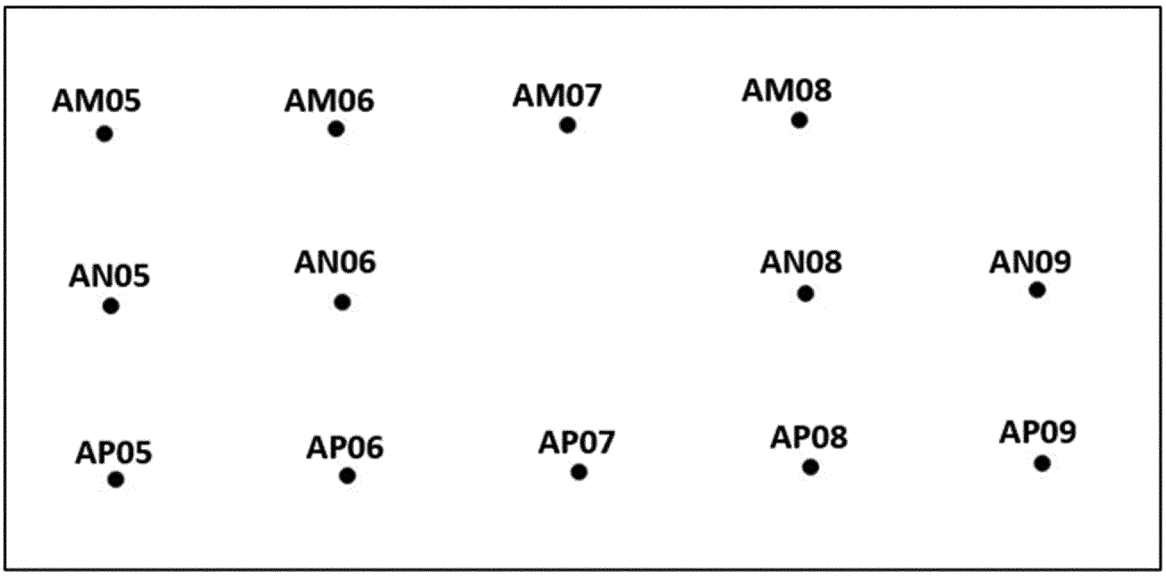
[1] Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean, Corrections (88 FR 15939).

[2] The Rhode Island and Massachusetts Structure Labeling Plot (West) is an attachment to the Conditions of Construction and Operations Plan Approval Lease Number OCS–A 0517 (*boem.gov*) and can be found at *https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF-COP-Terms-and-Conditions.pdf.*

the center point of the positions provided in the updated table below expressed in Decimal Degrees (DD) based on North American Datum 1983 (NAD 83).

Name	Facility type	Latitude	Longitude
AM05	WTG	N 41.10879493	W −71.19110374
AM06	WTG	N 41.10921219	W −71.16906236
AM07	WTG	N 41.10962524	W −71.14702052
AM08	WTG	N 41.11003408	W −71.12497822
AN05	WTG	N 41.09212418	W −71.19054951
AN06	WTG	N 41.09195639	W −71.16788437
AN08	WTG	N 41.09336261	W −71.12444068
AN09	WTG	N 41.093767	W −71.1024035
AP05	WTG	N 41.07545338	W −71.18999573
AP06	OSS	N 41.07587016	W −71.16796548
AP07	WTG	N 41.07628273	W −71.14593476
AP08	WTG	N 41.07669109	W −71.12390359
AP09	WTG	N 41.07709524	W −71.10187197

The positions of the 13 safety zones are shown on the updated chartlet below. For scaling purposes, there is approximately one NM spacing between each position.



(Chartlet showing turbine positions using unique alpha-numeric naming convention.)

When enforced, no unauthorized vessel or person will be permitted to enter the safety zone without obtaining permission from the First Coast Guard District Commander or a designated representative. Requests for entry into the safety zone will be considered and approved on a case-by-case basis. Persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 866–842–1560 (First Coast Guard District Command Center). If permission is granted, all persons and vessels must comply with the instructions of the First Coast Guard District Commander or designated representative.

The regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes and Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

Aligning with 33 CFR 147.15, the safety zones established will extend to a maximum distance of 500-meters around the OCS facility measured from its center point. Vessel traffic will be able to safely transit around the safety zones, which will impact a small, designated area in the Atlantic Ocean, without significant impediment to their overall voyage. This safety zone is necessary to provide for the safety of life, property, and the environment during the construction of each

structure, in accordance with Coast Guard maritime safety missions and the First Coast Guard District Commander's finding.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect owners or operators of vessels intending to transit or anchor in the SFWF, some of which might be small entities. However, these safety zones will not have a significant economic impact on a substantial number of these entities because they are temporarily enforced, allow for deviation requests, and do not impact vessel transit significantly. Regarding the enforcement period, although these safety zones will be in effect from May 1, 2023, through December 31, 2023, vessels would only be prohibited from the regulated zone during periods of actual construction activity in correspondence to the period of enforcement. We expect the enforcement period at each location to last approximately 48 hours as construction progresses from one structure location to the next throughout each of the two phases. Additionally, vessel traffic could pass safely around each safety zone using an alternate route. Use of an alternate route likely will cause minimal delay for the vessel in reaching their destination depending on other traffic in the area and vessel speed. Vessels will also be able to request deviation from this rule to transit through a safety zone. Such requests will be considered on a case by-case basis and may be authorized by the First Coast Guard District Commander or a designated representative. For these reasons, the Coast Guard expects any impact of this rulemaking establishing a temporary safety zone around these OCS facilities to be minimal and have no significant economic impact on small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the potential effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone around an OCS facility to protect life, property, and the marine environment. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (waters).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 147.T01–0073 to read as follows:

§ 147.T01–0073 Safety Zones; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean.

(a) *Description.* The area within 500-meters of the center point of the

positions (NAD83) provided in the following table is a safety zone:

TABLE 1 TO PARAGRAPH (a)

Name	Facility type	Latitude	Longitude
AM05	WTG	N 41.10879493	W −71.19110374
AM06	WTG	N 41.10921219	W −71.16906236
AM07	WTG	N 41.10962524	W −71.14702052
AM08	WTG	N 41.11003408	W −71.12497822
AN05	WTG	N 41.09212418	W −71.19054951
AN06	WTG	N 41.09195639	W −71.16788437
AN08	WTG	N 41.09336261	W −71.12444068
AN09	WTG	N 41.093767	W −71.1024035
AP05	WTG	N 41.07545338	W −71.18999573
AP06	OSS	N 41.07587016	W −71.16796548
AP07	WTG	N 41.07628273	W −71.14593476
AP08	WTG	N 41.07669109	W −71.12390359
AP09	WTG	N 41.07709524	W −71.10187197

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the First Coast Guard District Commander in the enforcement of the safety zones.

(c) *Regulations.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel as defined in § 147.20; and

(2) A vessel authorized by the First Coast Guard District Commander or a designated representative.

(d) *Request for permission.* Persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander or a designated representative. If permission is granted, all persons and vessels must comply with lawful instructions of the First Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 866–842–1560 (First Coast Guard District Command Center).

(e) *Effectiveness and enforcement periods.* This section is in effect from May 1, 2023, through 11:59 p.m. on December 31, 2023. But it will only be enforced during active construction or other instances which may cause a hazard to navigation deemed necessary by the First Coast Guard District Commander. The First Coast Guard District Commander will make notification of the exact dates and times in advance of each enforcement period for the locations in paragraph (a) of this section to the local maritime community through the Local Notice to Mariners and will issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency. If the project is completed before December 31, 2023, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The First Coast Guard District Local Notice to Mariners can be found at: *https://www.navcen.uscg.gov.*

Dated: April 27, 2023.

J.W. Mauger,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2023–09295 Filed 4–27–23; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0290]

RIN 1625–AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters at the old Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge during demolition operations from May 1, 2023 through June 9, 2023. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective without actual notice from May 2, 2023, through June 9, 2023. For the purposes of enforcement, actual notice will be used from May 1, 2023, until May 2, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0290 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BM1 Michael Klopp, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email *MDNCRWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 13, 2023, Skanska-Corman-McLean, Joint Venture, notified the Coast Guard that the company will be conducting bridge demolition operations at the old Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge. The work described by the contractor requires the use of explosives, and debris removal and hydrographic surveying equipment. During explosive detonation periods, there can be no marine traffic transiting near or around the bridge for safety reasons.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. Demolition operations involving explosives will occur at the old Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge across the Potomac River and immediate action is needed to respond to the potential safety hazards associated with bridge demolition. Hazards from the demolition operations include low-hanging or falling ropes, cables, large piles and cement cast portions, dangerous projectiles, and/or other debris. We must establish this safety zone by May 1, 2023, to guard against these hazards.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with demolition operations at the old Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) has determined that potential hazards associated with bridge demolition starting May 1, 2023, will be a safety concern for anyone near the old Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge demolition site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being demolished.

IV. Discussion of the Rule

The COTP is establishing a safety zone from 12:01 a.m. on May 1, 2023, to 11:59 p.m. on June 9, 2023. The safety zone will cover the following areas:

Area 1. All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′38.74″ N, 077°00′52.99″ W, thence east to 38°21′52.67″ N, 076°59′2.51″ W, thence south along the shoreline to 38°21′43.45″ N, 076°58′56.64.22″ W, thence west to 38°21′28.91″ N, 077°00′52.81″ W, and thence north along the shoreline back to the beginning point, located in King George County, VA.

Area 2. All navigable waters of the Potomac River, within 1,500 feet of the explosives barge located in approximate position 38°21′21.47″ N, 076°59′45.40″ W.

The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled demolition and debris removal. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The term designated representative also includes an employee or contractor of Skanska-Corman-McLean, Joint Venture for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification will also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 and 46 U.S.C. 70052. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location and time of year of the safety zone. The temporary safety zone is approximately 3,000 yards in width and 350 yards in length. This safety zone would impact a small designated area of the Potomac River for 40 total days, but we anticipate that there would be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. During explosive detonations, the Coast Guard will have law enforcement assets on-scene to enforce the safety zone immediately before, during and after explosive detonations. This safety zone is established outside the normal recreational boating season for this area, which occurs during the summer season. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 40 total days that would prohibit entry within a portion of the Potomac River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T05–0290 to read as follows:

§ 165.T05–0290 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following areas are safety zones. These coordinates are based on North American Datum of 1983 (NAD 83).

(1) *Area 1.* All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′38.74″ N, 077°00′52.99″ W, thence east to 38°21′52.67″ N, 076°59′2.51″ W, thence south along the shoreline to 38°21′43.45″ N, 076°58′56.64.22″ W, thence west to 38°21′28.91″ N, 077°00′52.81″ W, and thence north along the shoreline back to the beginning point, located in King George County, VA.

(2) *Area 2.* All navigable waters of the Potomac River within 1,500 feet of the explosives barge located in approximate position 38°21′21.47″ N, 076°59′45.40″ W.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone. The term also includes an employee or contractor of Skanska-Corman-McLean, Joint Venture for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

Marine equipment means any vessel, barge, or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative. If a vessel or person is notified by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative that they have entered the safety zone without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of the safety zone areas in paragraph (a) of this section must first contact the Skanska-Corman-McLean, Joint Venture designated representative, the on-site project manager by telephone number 781–953–1465 or on Marine Band Radio

VHF–FM channels 13 and 16 from the pusher tug Miss Stacy. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, Skanska-Corman-McLean, Joint Venture, or designated representative to the mariner regarding the conditions of entry to and exit from any area of the safety zone. The COTP or the COTP's representative can be contacted by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcasts on VHF–FM marine band radio announcing specific enforcement dates and times.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 12:01 a.m. on May 1, 2023, to 11:59 p.m. on June 9, 2023.

Dated: April 27, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2023–09300 Filed 5–1–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2022–OESE–0151]

Final Priorities, Requirements, and Definitions—State-Tribal Education Partnership Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) announces final priorities, requirements, and definitions for the State-Tribal Education Partnership (STEP) program, Assistance Listing Number (ALN) 84.415A. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2023 and subsequent years. The Department is taking this action to support the development of partnerships among Tribal educational agencies (TEAs), State educational agencies (SEAs), and local educational agencies (LEAs) to support the creation or expansion of TEAs to directly administer education programs, including formula grant programs under the Elementary and Secondary Education Act of 1965, as amended (ESEA), consistent with State law and under a written agreement among the parties.

DATES: These priorities, requirements, and definitions are effective June 1, 2023.

FOR FURTHER INFORMATION CONTACT: Donna Bussell, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W207, Washington, DC 20202–6450. Telephone: 202–987–0204. Email: *donna.bussell@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purposes of STEP are to: (1) promote Tribal self-determination in education; (2) improve the academic achievement of Indian children and youth; and (3) promote the coordination and collaboration of TEAs (as defined in this notice) with SEAs and LEAs to meet the unique education and culturally related academic needs of Indian students.

Program Authority: Section 6132 of the ESEA (20 U.S.C. 7452).

Public Comment: We published a notice of proposed priorities, requirements, and definitions (NPP) for this program in the **Federal Register** on December 28, 2022 (87 FR 79824). The NPP contained background information regarding the proposed priorities, requirements, and definitions. In response to our invitation to comment in the NPP, no comments on the proposed priorities, requirements, or definitions were received. As discussed in the *Analysis of Comments and Changes* section, we made changes to Priorities 1 and 3, as well as to two definitions. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes:

Priority 1—Improve Identification of Native Students for Title VI Indian Education Formula Grant Program.

Comments: None.

Discussion: We are revising the title of the priority to better align with the text of the priority, which is focused on improving identification of students for the Title VI Indian Education formula grant program.

We are also revising the priority to better align with the statutory definition of ''Indian'' in ESEA section 6151(3), which, in relevant part, includes a student if they are a member of a Tribe or if they are a descendent in the first or second degree of a Tribal member. Although the proposed priority referred to Tribal affiliation generally, the ESEA definition of Indian includes students with a descendant relationship in the first or second degree for Title VI formula grant purposes.

Changes: We have revised the title of the priority to ''Improve Identification of Native Students for Title VI Indian Education Formula Grant Program.'' We have also revised the priority to reflect that Tribal affiliation includes an affiliation through a descendent relationship.

Priority 3—Enhance Tribal Consultation.

Comments: None.

Discussion: As explained in the NPP, we proposed Priority 3, in part, to advance Tribal self-determination in education by supporting TEAs to convene collaborative meetings with SEAs and LEAs to promote meaningful consultation. The majority of comments from Tribal leaders during Tribal Consultation on April 26, 2021, expressed that those partnerships should include both SEAs and LEAs and should be rooted in Tribal consultation at the local level. Tribal leaders also supported the need for partnerships to include both entities. To that end, we referred to ''SEA goals'' and ''ESEA State Plans'' in the proposed priority but did not make specific reference to Tribal consultation with SEAs. Therefore, we are revising the priority to better address comments made during Tribal consultation and better reflect the goal of prioritizing projects that enhance consultation with SEAs and LEAs.

Additionally, we recognize the importance of a Tribe or TEA determining who should be invited to enhance Tribal consultation. In referring to ''affected LEAs'' in the proposed priority, we limited the types of LEAs that could be considered to those that meet the definition of ''affected LEA'' in ESEA section 8538(c)(1). We believe that a Tribe or TEA could reasonably conclude that the participation of an LEA that does not meet the ESEA definition of ''affected LEA'' could promote meaningful consultation; therefore, we are expanding the types of LEAs included in this priority to provide maximum flexibility to the Tribes and TEAs.

Changes: We have revised this priority to add the option for projects to enhance consultation with an SEA, at least one LEA, or both. We also have removed the reference to ''affected LEAs'' and the corresponding definition.

Priority 5—Create a TEA.

Comments: None.

Discussion: To improve clarity, we are revising this priority to describe the types of applicants that are eligible, rather than the types of applicants that are not eligible, under the priority.

Changes: We have rephrased this priority to provide that to meet this priority, applicants must be an Indian Tribe or Tribal organization approved by an Indian Tribe that is applying to create a TEA.

Definitions.

Established TEA.

Comments: None.

Discussion: Under the proposed definition of ''established TEA,'' to demonstrate that a TEA has an existing prior relationship with an SEA or LEA, the TEA must have entered into a final written agreement (FWA) with the SEA or LEA. Upon further consideration and to maximize flexibility for TEAs, we are revising the definition to permit TEAs to provide evidence of an existing prior relationship with an SEA or LEA other than an FWA. We understand that while some TEAs may have an FWA to coordinate with an LEA or SEA, particularly TEAs that have received STEP grants, it is possible that a TEA worked with an LEA or SEA without an FWA.

Changes: We have revised the first criterion of the definition to remove the reference to a final written agreement.

Final Priorities

Priority 1—Improve Identification of Native Students for Title VI Indian Education Formula Grant Program.

To meet this priority, an applicant must propose to partner with an LEA to develop and maintain effective and culturally responsive methods to better identify, and support the identification of, Indian students who may be undercounted or under-identified as eligible for an ESEA title VI formula grant program consistent with section 6112 of the ESEA. This includes identifying Indian students who are not enrolled in a Tribal Nation but who have an affiliation with a Tribal Nation through being a descendant in the first or second degree from a Tribal Nation member as described in ESEA section 6151(3).

Note: The Family Educational Rights and Privacy Act (FERPA) does not permit an LEA to disclose personally identifiable information (PII) from students' education records to a TEA without parental consent unless the disclosure meets one of FERPA's exceptions to the general consent requirement. The most relevant exceptions to FERPA's general consent requirement that may apply if certain conditions are met are the ''school official,'' ''studies,'' and ''audit/evaluation'' exceptions. For further information on FERPA, contact the Department's Student Privacy Policy Office at *https://studentprivacy.ed.gov/.*

Priority 2—Increase Coordination of Indian Education Programs.

To meet this priority, an applicant must submit a high-quality plan that describes how it will strengthen its partnership with the SEA or LEA, to enhance coordination among all existing federally funded Indian education grants that impact the partner SEA or LEA to support the academic achievement of Indian students. A high-quality plan includes goals, milestones, and timelines for coordination, and must identify which existing federally funded programs the applicant is coordinating.

Priority 3—Enhance Tribal Consultation.

Projects to improve existing local Tribal consultation efforts with an SEA or LEA. To meet this priority, applicants must provide a high-quality plan that describes how the project will increase the frequency of consultations with an SEA, at least one LEA, or both, and develop meaningful consultation procedures to help each LEA or SEA meet its goals as defined in their ESEA Consolidated State and Local Plans.

Priority 4—New STEP Grantee.

To meet this priority, an applicant must be an early TEA or applying to create a TEA and must not have previously received a STEP award from the Department.

Priority 5—Create a TEA.

To meet this priority, an applicant must be an Indian Tribe or Tribal organization approved by an Indian Tribe that is applying to create a TEA.

Priority 6—Expand Capacity of Early TEAs.

To meet this priority, an applicant must be an early TEA.

Priority 7—Expand Capacity of Established TEAs.

To meet this priority, an applicant must be an established TEA.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute or competitive preference through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

Application Requirement 1—Draft Written Agreement With Partners:

An applicant must provide a Draft Written Agreement (DWA), with the appropriate SEA and/or LEA partner(s). For applicants creating a new TEA, a DWA is only required with an LEA. For applicants expanding capacity for an early TEA or established TEA, a DWA with both an SEA and LEA is required.

Program Requirement 1—Hire Project Director Within 60 Days:

Grantees must hire a project director as soon as practicable, but no later than 60 days after the beginning of the performance period.

Program Requirement 2—Final Written Agreement With Partners:

Grantees must submit a final written agreement signed by all parties entering into the agreement within 120 days after receiving the grant award notification.

Final Definitions

The Department establishes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Directly administer means conducting, as the fiscal agent, SEA functions or LEA functions for education programs, including ESEA formula grant programs, consistent with State law and the FWA.

Draft written agreement (DWA) means an unsigned written agreement with an attached letter of support from each SEA or LEA partner indicating each has reviewed the project plan and will finalize the DWA into an FWA within 120 days of grant award notification. The DWA must include the following:

(1) The roles and responsibilities for each partner.

(2) An agreed-upon list of deliverables (*Note:* Deliverables cannot be direct services to Indian students).

(3) Identification of at least one point of contact for each partner.

(4) A description of the resources each partner will contribute to the project.

(*Note:* Resources do not need to be monetary or matching funds).

Early TEA means a TEA that meets one or two of the criteria in the definition of an established TEA.

Established TEA means a TEA that meets three or more of the following criteria:

(1) Has received a STEP grant in 2012 or subsequent years, or provides evidence of an existing prior relationship with an SEA or LEA.

(2) Has an existing Tribal education code.

(3) Has directly administered at least one education program within the past 5 years.

(4) Has administered at least one Federal, State, local, or private grant within the past 5 years.

(5) Has authorized teaching certifications.

Final written agreement (FWA) means a signed written agreement between the TEA and the SEA or LEA; the TEA and one or more LEAs; or the TEA and both an SEA and one or more LEAs, that documents the commitment and timeline of the agreeing partners to implement the terms and conditions specified in the DWA.

New TEA means a Tribal entity that does not meet the definition of ''early TEA'' or ''established TEA.''

Tribal consultation means that—

(1) The SEA or LEA provides Tribes the opportunity for input;

(2) The SEA or LEA considers and responds to the input from Tribal leaders or their officially designated proxies regarding an education program that affects the Tribal Nation or TEA; and

(3) The partner Tribal Nation provides written confirmation that the consultation was meaningful and in good faith.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education. This term also includes an agency, department, or instrumentality of more than one Tribe if the Tribes are in close geographic proximity or have cultural connections to each other and agree through joint Tribal government resolution to have a combined TEA.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, or definitions, we will invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe that the final priorities, requirements, and definitions will not impose significant costs on eligible TEAs that receive assistance through the STEP program. We also believe that the benefits of implementing the final priorities, requirements, and definitions outweigh any associated costs.

We believe that the costs imposed on applicants would be limited to costs associated with developing applications, including developing partnerships with SEAs and LEAs, and that the benefits of creating a partnership that is likely to be sustained after the end of the project period would outweigh any costs incurred by applicants. The costs of carrying out activities proposed in STEP applications will be paid for with program funds. Thus, the costs of implementation will not be a burden for any eligible

applicants, including small entities. We also note that program participation is voluntary.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79, except that federally recognized Indian Tribes are not subject to those rules. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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

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

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

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–09197 Filed 5–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 410

[CMS–5539–N]

RIN 0938–

Medicare Program; Extending the Medicare Diabetes Prevention Program's (MDPP) Expanded Model Emergency Policy Through CY 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Policy extension.

SUMMARY: This document is to alert Medicare Diabetes Prevention Program (MDPP) expanded model suppliers and interested parties that although current MDPP flexibilities permitted pursuant to regulations issued during the Public Health Emergency (PHE) for COVID–19 are scheduled to expire on May 11, 2023, we are specifying an effective date, for purposes of the regulations of December 31, 2023, through which in-person delivery of MDPP services can be suspended. This extended effective date applies for all MDPP suppliers to allow additional time to resume in-person services. MDPP suppliers may use all of or part of this period to extend the flexibilities described in the regulations. This document provides information to MDPP suppliers regarding the extension of the ability to suspend in-person services as the PHE for COVID–19 concludes.

DATES: Effective on May 2, 2023, the PHE flexibilities described under 42 CFR 410.79(e) are extended through 11:59 p.m. EST on December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Mollie Howerton, (410) 786–5395, and Karen Abraham-Burrell, (410) 786–4789.

SUPPLEMENTARY INFORMATION:

I. Background

On December 28, 2020, the Centers for Medicare & Medicaid Services (CMS) issued the Calendar Year (CY) 2021 Physician Fee Schedule (PFS) final rule (85 FR 84472), which modified certain Medicare Diabetes Prevention Program (MDPP) policies for the remainder of the COVID–19 Public Health Emergency (PHE), as well as during any future 1135 waiver event that we determine may disrupt in-person MDPP services (an ''applicable 1135 waiver event''). Accordingly, under the amended regulation at 42 CFR 410.79(e)(3)(v), MDPP suppliers have been permitted to suspend in-person delivery of the set of MDPP services during the PHE and are required to resume in-person services either upon the end of the PHE or upon an effective date specified by CMS. The term ''set of MDPP services'' is defined at § 410.79(b) to mean the series of MDPP sessions, composed of core sessions and core maintenance sessions offered over the course of the MDPP services period. Under § 410.79(c)(iv), weight measurements used to determine the achievement or maintenance of the required minimum weight loss must be taken during an ''MDPP session,'' which is defined at § 410.79(b) to mean a core session or a core maintenance session.

The MDPP regulations provide for the following flexibilities during the PHE or an applicable 1135 waiver event:

- Alternatives to the requirement for in-person weight measurement (§ 410.79(e)(3)(iii)). Section 410.79(e)(3)(iii) permits an MDPP supplier to obtain weight measurements for MDPP beneficiaries for the baseline weight and any weight loss-based performance achievement goals in the following manner: (1) via digital technology, such as scales that transmit weights securely via wireless or cellular transmission; or (2) via self-reported weight measurements from the at-home digital scale of the MDPP beneficiary. We stated that self-reported weights must be obtained during live, synchronous online video technology, such as video chatting or video conferencing, wherein the MDPP coach observes the beneficiary weighing themselves and views the weight indicated on the at-home digital scale. Alternatively, the MDPP beneficiary may self-report their weight by submitting to the MDPP supplier a date-stamped photo or video recording of the beneficiary's weight, with the beneficiary visible in their home. The photo or video must clearly document the weight of the MDPP beneficiary as it appears on the digital scale on the date associated with the billable MDPP session. This flexibility allows suppliers to bill for participants achieving weight loss performance goals.
- Elimination of the maximum number of virtual services (§ 410.79(e)(3)(iv)). The virtual session limits described in § 410.79 (d)(2), and (d)(3)(i) and (ii) do not apply, and MDPP suppliers may provide all MDPP sessions virtually during the PHE as defined in 42 CFR 400.200 or applicable 1135 waiver event. Under this provision, MDPP suppliers are permitted to provide MDPP services virtually during the PHE, as long as the virtual services are furnished in a manner that is consistent with the CDC Diabetes Prevention Recognition

Program (DPRP) standards for virtual sessions, the curriculum furnished during the virtual sessions addresses the same curriculum topics as the CDC-approved National Diabetes Prevention Program (National DPP) curriculum, the supplier has an in-person DPRP organizational code, and other requirements specified at § 410.79(e)(3)(iv) are satisfied. For more information on the MDPP flexibilities allowed during the PHE, please see *https://www.cms.gov/files/document/participants-medicare-diabetes-prevention-program-cms-flexibilities-fight-covid-19.pdf*.

For purposes of § 410.79(e)(3)(v), we are specifying an effective date of December 31, 2023, through which MDPP suppliers may suspend in-person delivery of the set of MDPP services. We recognize that extending the suspension of in-person delivery of the set of MDPP services would not be useful without also extending the PHE flexibilities permitted under § 410.79(e)(3)(iii) (regarding use of alternative methods for obtaining weight measurements during virtual services) and § 410.79(e)(3)(iv) (regarding elimination of the maximum number of virtual services). Therefore, we are extending the PHE flexibilities at § 410.79(e)(3)(iii), and (iv), to ensure that MDPP suppliers can continue delivering the set of MDPP services on a virtual basis, including all core and core maintenance sessions as well as the collection of body weight measurements.

Given the 3-year duration of the COVID–19 PHE, we anticipate that MDPP suppliers will need time following the end of the COVID–19 PHE to resume in-person services for reasons that may include securing an available physical location that meets organizational and beneficiary needs, recruiting coaches, educating new and existing beneficiaries about in-person sessions, and adjusting messaging regarding the delivery modality of MDPP. Based on feedback from MDPP suppliers, interested parties, CDC DPRP and National Diabetes Prevention Program staff, we anticipate that MDPP suppliers may require at least 6 additional months to adequately prepare to resume in-person services from an operational perspective as well as allow time for us to consider doing additional rulemaking. Therefore, we will allow MDPP suppliers to utilize the period covering May 12, 2023, through December 31, 2023, to resume in-person services through the use of all or part of this period to extend the flexibilities described in § 410.79(e), to allow for an orderly transition of the flexibilities enabled by the PHE for COVID–19.

II. Provisions of This Document

We established and implemented policies for MDPP in response to the COVID–19 PHE to support our goals of ensuring beneficiary access to necessary services and maintenance of these services. Although we previously informed MDPP suppliers and interested parties that they must be prepared to resume in-person services following the end of the PHE, MDPP suppliers may continue to utilize the MDPP flexibilities allowed under § 410.79(e) through December 31, 2023, to maintain the continuity of services for both suppliers and beneficiaries as the public transitions out of the COVID–19 PHE. Under § 410.79(e)(3)(v), we allowed MDPP suppliers to suspend the in-person delivery of MDPP when necessary due to an applicable 1135 waiver event, and subsequently resume in-person services either upon the end date of the 1135 waiver event emergency period or an effective date specified by us. Given the 3-year duration of the PHE, we anticipate that MDPP suppliers will need additional time to resume in-person services due to reasons such as possible site inactivity, supplier inactivity, or challenges regarding in-person beneficiary recruitment. MDPP suppliers may use this period to continue the flexibilities described under § 410.79(e), in recognition of the variable effects of the PHE for COVID–19 on both MDPP suppliers and Medicare beneficiaries.

The Administrator of the CMS, Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 26, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–09188 Filed 4–28–23; 4:15 pm]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 88, No. 84
Tuesday, May 2, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[Doc. No. AMS–LP–22–0002]

Beef Promotion and Research Order; Reapportionment and Technical Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in domestic cattle inventories as well as changes in levels of imported cattle, beef, and beef products that have occurred since the Board was last reapportioned in July 2020. These adjustments are required by the Beef Promotion and Research Order (Order) and, if adopted, would result in a decrease in Board membership from 101 to 99, effective with the Secretary of Agriculture's (Secretary) appointments from nominees requested in Spring of 2023. The proposed rule would also update the list of Qualified State Beef Councils (QSBCs) in the Order by removing the Maryland Industry Beef Council which voted to dissolve their State beef council.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: Comments should be posted online at *https://www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the document number AMS–LP–22–0002, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be sent to Lacey Heddlesten, Agricultural Marketing Specialist; Research and Promotion Division; Livestock and Poultry Program, AMS, USDA; STOP 0251, 1400 Independence Avenue SW, Washington, DC 20250. Comments will be made available for public inspection at the above address during regular business hours or via the internet at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lacey Heddlesten, Agricultural Marketing Specialist, Research and Promotion Division, at (620) 717–3834; or by email at *Lacey.Heddlesten@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866, and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the definition of a significant regulatory action contained in section 3(f) of E.O. 12866 and therefore, the Office of Management and Budget (OMB) has waived review of this action.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Agricultural Marketing Service (AMS) has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under E.O. 13175. AMS regularly meets with tribal leaders and discuss matters of mutual interest regarding the marketing of agricultural products. AMS will work with the U.S. Department of Agriculture's (USDA) Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the regulations.

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).

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581–0093.

Background and Proposed Action

The Board was initially appointed on August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901–2911), and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, while importer representation is based on the conversion of the volume of imported cattle, beef, and beef products into live animal equivalencies.

Reapportionment

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the State or unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years, but not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States. Further, section 1260.141(d) allows the board to recommend to the Secretary a modification in the number of cattle per unit necessary for representation of Board seats.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit is entitled to an additional Board member for each additional 1 million head of cattle within the unit, as provided in section 1260.141(e)(4). Further, as provided in section 1260.141(e)(3), importers are represented by a single unit, with their number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(f) of the Order states in determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to sections 1260.201 and 1260.202 industry data and data published by USDA. The proposed producer representation is based on an average of the inventory of cattle in the various States on January 1 in 2020, 2021, and 2022 as reported by USDA's National Agricultural Statistics Service (NASS). The proposed importer representation is based on a combined total average of the 2019, 2020, and 2021 live cattle imports as published by USDA's Economic Research Service (ERS) and the average of the 2019, 2020, and 2021 live animal equivalents for imported beef and beef products.

In considering reapportionment, the Board reviewed cattle inventories as of January 1 in 2020, 2021, and 2022, as well as cattle, beef, and beef product import data for the period of January 1, 2019, to December 31, 2021. The Board determined that an average of the inventory of cattle on January 1 in 2020, 2021, and 2022 best reflects the number of cattle in each State or unit since publication of the last reapportionment rule in 2020 (85 FR 39461). The Board reviewed data published by ERS to determine proper importer representation. The Board recommended the use of the average of a combined total of the 2019, 2020, and 2021 cattle import data and the average of the 2019, 2020, and 2021 live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds (71 FR 47074).

Based on their 3-year analysis, the Board is recommending to the Secretary the following changes:

State/unit	Increase/decrease	Current representation	Revised representation
Idaho	+1	2	3
Montana	−1	3	2
Pennsylvania	−1	2	1
Net Change	−1		

Further, Wisconsin's 3-year average cattle inventory is less than 1 percent (33,000 head) below the threshold of 3.5 million head of cattle needed to maintain 4 Board seats. The cattle inventory report estimates each state's inventory through a producer survey which is conducted each January by NASS.[1] The survey is subject to a margin of error due to sampling size, response rates, etc. The average coefficient of variation for Wisconsin's total cattle inventory in the 2020, 2021, 2022 cattle inventory reports is 3.4 percent (±34,000 head). As the coefficient of variation is greater than the amount by which the inventory is under the 3.5 million head threshold, the Board voted on July 27, 2022, to allow Wisconsin to maintain 4 Board seats instead of losing 1, for a total of 3 seats.

The Order section 1260.141, however, does not take into consideration the margin of error when analysis is conducted. Therefore, AMS is proposing the Order be applied without using the NASS margin of error. Thus, the Secretary proposes to adjust Board membership from 101 to 99 with Wisconsin losing 1 seat.

If the recommendation of the Board is adopted by the Secretary, the reapportionment would take effect in the 2023 nomination process and effect the number of board members the Secretary appointments to fill positions early in the year 2024.

Technical Amendment

The proposed rule would also update the list of QSBCs in the Order by removing the Maryland Industry Beef Council which unanimously voted to dissolve their State beef council during the September 14, 2022, board meeting.

Initial Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of this action on small entities and has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In 2022, the Small Business Administration (SBA) (13 CFR 121.201) published a final rule (84 FR 64013) that updated its size standards based on income or employee numbers for various small business falling under the North American Industry Classification System (NAICS). Within that rule, the SBA threshold for ''Beef Cattle Ranching and Farming'' (NAICS code 112111) operations to qualify small businesses was raised from annual sales of $1 million or less to annual sales of $2.5 million or less.

According to the NASS 2017 Census of Agriculture, the number of U.S. operations with beef cattle totaled

[1] *https://usda.library.cornell.edu/concern/publications/h702q636h.*

729,046 and with cattle of any type totaled 882,692.[2] The same Census of Agriculture data shows that roughly 4 percent of operations with cattle, or 31,476 operations, have annual sales receipts of $1,000,000 or more, the small business standard prior to the 2022 revision.[3] No further breakout in the Census of Agriculture data is made to account for the new, higher SBA standard. However, the vast majority of cattle producers, 96 percent, would be considered small businesses under the new SBA standards. It should be noted that producers are only indirectly impacted by the proposed rule.

Cattle, beef, and veal importers are also impacted by the proposed rule. Based on data available on membership in the Meat Import Council of America, AMS estimates that approximately 190 firms import beef or beef products. AMS is not aware of any data that reports the number of beef-importing entities that meet the SBA definition of small businesses.

In addition to cattle producers, affected entities under this rule change include meat and meat-product merchant wholesalers (wholesalers), classified under NAICS code 424470, and meat processors from carcass (processors), classified under NAICS code 311612. The SBA thresholds for both these businesses to qualify as small are that they have fewer than 1,000 employees. The most current data from the Census of Manufacturing states that all 2,376 wholesalers were small businesses (in 2017)[4] and that all 1,423 processors were small business (in 2020).[5]

Recent import trade data was also considered for understanding the overall dynamics of this industry segment. The Foreign Agricultural Service reports monthly trade data for traded agricultural products by product type. Based on analysis of that trade data and consumption data collected in the USDA's World Agricultural Demand and Supply Estimates, over the 2017 to 2022 period, cattle imports ranged between 1.8 and 2.3 percent of the total cattle inventory and that beef imports ranged from 9.8 to 10.7 percent of total supply. Veal imports during that time were negligible as a share of domestic production.

[2] *https://www.nass.usda.gov/AgCensus/index.php.*

[3] *https://quickstats.nass.usda.gov/results/758A0A38-2BF4-39CE-90EF-A581BFEA3E81.*

[4] *https://data.census.gov/profile/424470__Meat_and_meat_product_merchant_wholesalers?g=0100000US&n=424470.*

[5] *https://data.census.gov/profile/311612_-Meat_and_meat_product_merchant_wholesalers?g=0100000US&n=311612.*

The proposed rule imposes no new burden on the industry, as it only adjusts representation on the Board to reflect changes in domestic cattle inventory, as well as in cattle and beef imports. Additionally, the Order section 1260.141 does not take into consideration the margin of error when analysis is conducted. Therefore, AMS is proposing the Order guidance to be applied without using the NASS margin of error and thus the Secretary proposes to adjust Board membership from 101 to 99. Following the proposed rule, a 30-day comment period is provided to allow interested industry persons to respond to this proposal.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

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

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 1260 as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 2. Revise § 1260.141 paragraph (a) and the table to paragraph (a) to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2023 Board nominations and the associated appointments effective early in the year 2024, the United States shall be divided into 38 geographical units and 1 unit representing importers, for a total of 39 units. The number of Board members from each unit shall be as follows:

TABLE 1 TO PARAGRAPH (a)—CATTLE AND CALVES [1]

State/unit	(1,000 Head)	Directors
1. Alabama	1,285	1
2. Arizona	967	1
3. Arkansas	1,733	2
4. Colorado	2,700	3
5. Florida	1,670	2
6. Georgia	1,077	1
7. Idaho	2,507	3
8. Illinois	1,047	1
9. Indiana	833	1
10. Iowa	3,800	4
11. Kansas	6,483	6
12. Kentucky	2,073	2
13. Louisiana	777	1
14. Michigan	1,137	1
15. Minnesota	2,203	2
16. Mississippi	917	1
17. Missouri	4,217	4
18. Montana	2,383	2
19. Nebraska	6,800	7
20. New Mexico	1,373	1
21. New York	1,433	1
22. North Carolina	798	1
23. North Dakota	1,893	2
24. Ohio	1,283	1
25. Oklahoma	5,217	5
26. Oregon	1,260	1
27. Pennsylvania	1,430	1
28. South Dakota	3,900	4
29. Tennessee	1,783	2
30. Texas	12,900	13
31. Utah	803	1
32. Virginia	1,410	1
33. Wisconsin	3,467	3
34. Wyoming	1,290	1
35. Northwest Unit		
Alaska	17	.....
Hawaii	142	.....
Washington	1,157	
Total	1,316	1
36. Northeast Unit	.....	.....
Connecticut	48	.....
Delaware	13	.....
Maine	77	.....
Maryland	174	.....
Massachusetts	36	.....
New Hampshire	32	.....
New Jersey	26	.....
Rhode Island	4	.....
Vermont	248	.....
Total	657	1
37. Mid-Atlantic Unit	.....	.....
South Carolina	327	.....
West Virginia	380	
Total	707	1
38. Southwest Unit:		
California	5,167	.....
Nevada	465	.....
Total	5,632	6
39. Importers Unit [2]	7,466	7

[1] 2020, 2021, and 2022 average of January 1 cattle inventory data.

[2] 2019, 2020, and 2021 average of annual import data.

* * * * *

■ 3. Revise § 1260.315 to read as follows:

§ 1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as Qualified State Beef Councils:

(a) Alabama Cattleman's Association.
(b) Arizona Beef Council.
(c) Arkansas Beef Council.
(d) California Beef Council.
(e) Colorado Beef Council Authority.
(f) Delaware Beef Advisory Board.
(g) Florida Beef Council, Inc.
(h) Georgia Beef Board, Inc.
(i) Hawaii Beef Industry Council.
(j) Idaho Beef Council.
(k) Illinois Beef Association, Inc.
(l) Indiana Beef Council, Inc.
(m) Iowa Beef Cattle Producers Association/dba/Iowa Beef Industry Council.
(n) Kansas Beef Council.
(o) Kentucky Cattleman's Association, Inc.
(p) Louisiana Beef Industry Council.
(q) Michigan Beef Industry Commission.
(r) Minnesota Beef Council.
(s) Mississippi Beef Council.
(t) Missouri Beef Industry Council, Inc.
(u) Montana Beef Council.
(v) Nebraska Beef Council.
(w) Nevada Beef Council.
(x) New Jersey Beef Industry Council.
(y) New Mexico Beef Council.
(z) New York Beef Industry Council.
(aa) North Carolina Cattlemen's Beef Council.
(bb) North Dakota Beef Commission.
(cc) Ohio Beef Council.
(dd) Oklahoma Beef Council.
(ee) Oregon Beef Council.
(ff) Pennsylvania Beef Council.
(gg) South Carolina Beef Council.
(hh) South Dakota Beef Industry Council.
(ii) Tennessee Beef Industry Council.
(jj) Texas Beef Council.
(kk) Utah Beef Council.
(ll) Vermont Beef Industry Council.
(mm) Virginia Beef Industry Council.
(nn) Washington State Beef Commission.
(oo) West Virginia Beef Council, Inc.
(pp) Wisconsin Beef Council, Inc.
(qq) Wyoming Beef Council.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–08956 Filed 5–1–23; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0050]

RIN 3150–AK93

List of Approved Spent Fuel Storage Casks: TN Americas LLC; NUHOMS® EOS Dry Spent Fuel Storage System; Certificate of Compliance No. 1042, Amendment No. 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 3 to Certificate of Compliance No. 1042. Amendment No. 3 revises the certificate of compliance to add three new heat load zone configurations, add a variable-lead thickness transfer cask, add ATRIUM 11 fuel as an allowable content, update the criticality evaluation, allow ultrasonic testing of the outer top cover plate weld, reduce the time limit for transfer of two heat load zone configurations, incorporate a method to determine new loading patterns, waive a fabrication pressure test requirement, and make conforming changes for consistency and terminology clarification. Amendment No. 3 also includes additional changes associated with consideration of severe weather, maintaining water in the annulus, and design changes to the Matrix Loading Crane.

DATES: Submit comments by June 1, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2023–0050, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christian Jacobs, telephone: 301–415–6825, email: *Christian.Jacobs@nrc.gov* and Caylee Kenny, telephone: 301–415–7150, email: *Caylee.Kenny@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Plain Writing
V. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0050 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0050. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• NRC's PDR: You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2023–0050 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website

at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on July 17, 2023. However, if the NRC receives any significant adverse comment by June 1, 2023, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, states that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 24, 2017 (82 FR 14987), that approved the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1042.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No./ web link/**Federal Register** citation
Proposed Certificate of Compliance and Proposed Technical Specifications	
Proposed Certificate of Compliance No.1042 (Amendment No. 3)	ML23027A214.
Proposed Certificate of Compliance No. 1042 Appendix A: NUHOMS® EOS System Generic Technical Specifications Amendment 3.	ML23027A216.
Preliminary Safety Evaluation Report for the NUHOMS® EOS System: Certificate of Compliance No. 1042 Amendment No. 3.	ML23027A217.
TN Americas, LLC, NUHOMS EOS Amendment 3 Application Documents	
TN Americas LLC Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 0 (March 31, 2021).	ML21102A281 (package).

Document	ADAMS Accession No./ web link/**Federal Register** citation
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 1—Response to Request for Supplemental Information (June 23, 2021).	ML21174A231.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 2—Revised Response to OBS 4–6 (August 4, 2021).	ML21209A098.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 3—Revised Response to OBS 4–5 and Revised UFSAR Pages (September 3, 2021).	ML21246A136.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 3a—Amendment Scope Change (October 22, 2021).	ML21295A260.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 4—Response to Request for Additional Information (November 30, 2021).	ML21334A206.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 5—Response to Request for Additional Information (New Scope) and Revised Responses to Request for Additional Information (February 25, 2022).	ML22056A458.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 6—Revised Responses to Request for Additional Information (June 7, 2022).	ML22158A293.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 7—Clarification Regarding Annulus Temperatures During Vacuum Drying Operations (June 29, 2022).	ML22180A266.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 8—ASME NOG–1 Compliance and the Matrix Loading Crane (September 30, 2022).	ML22273A031.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 9—Clarifications Regarding Annulus Water, MX–LC Alignment, and Seismic Damping Values (October 31, 2022).	ML22304A217.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 10—Additional Information regarding ASME NOG–1 Compliance and the Matrix Loading Crane (November 14, 2022).	ML22318A205.
TN Americas LLC, Application for Amendment 3 to NUHOMS EOS Certificate of Compliance No. 1042, Revision 11—Response to Request for Additional Information (New Scope Addition #3—ASME NOG–1 Exceptions) and Clarifications Regarding Annulus Water (December 21, 2022).	ML22355A219.
Other Documents	
Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites: Final Rule, dated July 18, 1990 ..	55 FR 29181.
List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042: Direct Final Rule, dated March 24, 2017.	82 FR 14987.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2023–0050. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2023–0050); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: April 17, 2023.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2023–09010 Filed 5–1–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0002; Notice No. 221A; Re: Notice No. 221]

RIN 1513–AC78

Proposed Establishment of the Crystal Springs of Napa Valley Viticultural Area; Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is extending, for an additional 60 days, the comment period for a notice of proposed rulemaking it published as Notice No. 221, entitled, ''Proposed Establishment of the Crystal Springs of Napa Valley Viticultural Area.'' TTB is taking this action in response to a request to extend the comment period from a wine industry trade association.

DATES: The comment period for the notice of proposed rulemaking, published at 88 FR 13072, on March 2, 2023, is extended. Comments on Notice No. 221 are now due to TTB on or before June 30, 2023.

ADDRESSES: You may electronically submit comments to TTB on Notice No. 221, and view copies of Notice No. 221, its supporting materials, this comment extension notice, and any comments TTB receives on Notice No. 221 within Docket No. TTB–2023–0002 as posted on the *Regulations.gov* website (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on Notice No. 221 via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of Notice No. 221, its supporting materials, this document, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION: On March, 2, 2023, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a notice of proposed rulemaking in the **Federal Register** entitled, ''Proposed

Establishment of the Crystal Springs of Napa Valley Viticultural Area.'' See Notice No. 221 at 88 FR 13072. In that document, TTB proposed to establish the approximately 4,000-acre ''Crystal Springs of Napa Valley'' American viticultural area (AVA) in Napa County, California. The proposed AVA is located entirely within the existing Napa Valley AVA (27 CFR 9.23), which, in turn, is entirely within the existing North Coast AVA (27 CFR 9.30).

TTB published Notice No. 221 in response to a petition submitted on behalf of local vineyard owners and winemakers. Within the proposed AVA, there are approximately 30 commercial vineyards which cover a total of approximately 230 acres. The distinguishing feature of the proposed Crystal Springs of Napa Valley AVA is its topography. Further details concerning the proposed AVA are available in Notice No. 221. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

TTB recently received a request from the Napa Valley Vintners (NVV), a wine industry trade association, to extend the comment period for Notice No. 221 for an additional 90 days. In its request, NVV stated that in order to properly evaluate and respond to Notice No. 221, the group ''needs further time to study and map all vineyards using the Crystal Springs designation in relationship to the boundaries of the proposed AVA and to report its findings to the NVV Napa Name Protection Committee, which reviews all nested AVAs, and then to the NVV Board of Directors.''

After reviewing the NVV request, TTB has decided to extend the comment period for Notice No. 221 for an additional 60 days. TTB believes that an additional 60 days is an adequate extension of the comment period. If needed, TTB will consider additional requests to extend the comment period as necessary for interested parties to evaluate the vineyards using the Crystal Springs designation. Therefore, TTB will now accept public comments on Notice No. 221 through June 30, 2023. See the Public Participation section of Notice No. 221 for details on how and where to submit comments.

Mary G. Ryan,

Administrator.

[FR Doc. 2023–09042 Filed 4–28–23; 4:15 pm]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0135]

RIN 1625–AA00

Safety Zone; Atlantic Ocean, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone to be enforced in the event of hurricanes, tropical storms, and other disasters in the Florida Keys. This action is necessary to ensure the safety of the waters of the Key West Captain of the Port (COTP) zone Key West, FL. This proposed rulemaking would establish actions to be completed by industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other disasters threatening the Florida Keys. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 1, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0135 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LTJG Hailye Wilson, Sector Key West Waterways Management Division, Coast Guard; telephone (305) 292–8768, email *Hailye.M.Wilson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Florida Keys has the potential to be affected by hurricanes, tropical storms, and other disasters on a yearly basis, especially between the months of June and November. The Captain of the Port (COTP) Key West proposes establishing a safety zone to provide for the safety of life during such storms and events.

The purpose of this rulemaking is to protect mariners and port infrastructure during extreme weather and other natural disasters. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP Key West is proposing to establish a safety zone to be enforced in case of hurricanes, tropical storms, and other disasters in Florida Keys. This action is necessary to ensure the safety of the waters of the COTP Key West. This proposed rule would establish actions to be completed by local industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other disasters threatening the Florida Keys. The proposed safety zone would consist of all waters of the territorial seas, in the Key West COTP zone, as prescribed in 33 CFR 3.35–40. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the necessity to protect life and port infrastructure during hurricanes, tropical storms, and other disasters. The absence of a safe harbor in the Florida Keys precludes large vessels from accessing adequate facilities to weather a substantial storm or natural disaster within the COTP zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule would allow vessels to seek permission to remain in port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended,

requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit entry in certain waters of the Key West COTP Zone for the duration needed to ensure safe transit of vessels and industry post-hurricane, post-storm, and post-emergency. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0135 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy

and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0135 to read as follows:

§ 165.T07–0135 Safety Zone; Hurricanes, Tropical Storms and Other Disasters in Florida Keys.

(a) *Regulated Areas.* All navigable waters within Sector Key West COTP zone, Key West, Florida, as described in 33 CFR 3.35–40, during specified conditions.

(b) *Definitions.*

(1) *Designated Representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Key West, in the enforcement of the regulated areas.

(2) *Port Condition WHISKEY* means a condition set by the COTP when weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) *Port Condition X–RAY* means a condition set by the COTP when weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) *Port Condition YANKEE* means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) *Port Condition ZULU* means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) *Regulations.*

(1) *Port Condition WHISKEY.* All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Ports and waterfront facilities must begin removing all debris and securing potential flying hazards. Oceangoing vessels 300 gross tons (GT) and above must make plans to depart no later than the setting of Port Condition Yankee unless authorized by the COTP. Vessels wishing to remain in port are required to submit an application to the COTP prior to setting Port Condition X-Ray.

(2) *Port Condition X–RAY.* All vessels and port facilities must ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Vessels over 300GT without an approval to remain in port must depart prior to the setting of Port Condition YANKEE. Vessels with the COTP's permission to remain in port must implement their pre-approved mooring arrangement. Terminal operators must prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE.* Affected ports are closed to inbound vessel traffic. All oceangoing vessels greater than 300 Gross Tons must have departed designated ports within the Sector Key West COTP zone. Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities must continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act (MTSA).

(4) *Port Condition ZULU.* The port is closed to all vessel traffic except unless specifically authorized by the COTP. Cargo operations are suspended, including bunkering and lightering. Waivers may be granted unless Cargo of Particular Hazard or Certain Dangerous Cargo is involved.

(5) *Emergency Restrictions for Other Disasters.* Any natural or other disasters that are anticipated to affect the Sector Key West COTP zone will result in the prohibition of facility operations and vessel traffic transiting or remaining in the affected port.

(6) *Safety Zones Notice.* Coast Guard Sector Key West will attempt to notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

(7) *Regulated Area Notice.* The Coast Guard will provide notice of the regulated area via Broadcast Notice to Mariners or by on-scene designated representatives.

(8) *Exception.* This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: April 18, 2023.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2023–09202 Filed 5–1–23; 8:45 am]

BILLING CODE 9110–04–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2500

RIN 3045–AA83

AmeriCorps Statement of Organization

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The Corporation for National and Community Service (CNCS), which operates as AmeriCorps, is proposing a rule to provide general information to the public about its structure and purpose, as required by the Administrative Procedure Act. While AmeriCorps already provides information about its organizational structure on its public-facing website (*americorps.gov*), this rule would comply with the statutory requirement that specifically requires agencies to publish in the **Federal Register** their descriptions of organization. This rule will also increase transparency regarding AmeriCorps' operations by mapping out its existing program regulations, thereby providing an overview of the Agency's programs.

DATES: Written comments must be submitted by July 3, 2023.

ADDRESSES: You may send your comments electronically through the Federal government's one-stop rulemaking website at *www.regulations.gov.* You may also send your comments to Elizabeth Appel,

Associate General Counsel, at *eappel@cns.gov* or by mail to AmeriCorps, 250 E Street SW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Office of General Counsel, at (202) 967–5070, or *eappel@cns.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

AmeriCorps, the operating name for the Corporation for National and Community Service, is a Federal agency that engages millions of Americans in service. AmeriCorps members and AmeriCorps Seniors volunteers serve directly with nonprofit, tribal, faith-based, or community organizations to tackle some of our nation's most pressing challenges. Although AmeriCorps already provides information about its organizational structure on its website, *www.americorps.gov,* this rule would comply with the statutory requirement that specifically requires agencies to ''publish in the **Federal Register**'' their descriptions of organization. *See* 5 U.S.C. 552(a)(1)(A). This rule will also increase transparency regarding AmeriCorps' operations by mapping out its existing program regulations, thereby providing an overview of the Agency's programs.

This proposed rule adds AmeriCorps' organizational information to Code of Federal Regulations (CFR) part 2500. Part 2500 already includes information about AmeriCorps being CNCS's operating name and information about AmeriCorps' logos. This proposed rule would redesignate, without substantive change, the operating name and logo sections to new sections later in the CFR part and would add subpart designations. The following is a breakdown of the new and redesignated sections:

Current 45 CFR section	Proposed 45 CFR section	Description of change
	Subpart A—Introduction	New subpart designation.
	2500.1 Creation and authority	New section.
2500.1 Agency Operating Name	2500.2 Agency operating name	Redesignated without substantive change.
	2500.3 Purpose and mission	New section.
	Subpart B—Organization	New subpart designation.
	2500.10 General	New section.
	2500.11 AmeriCorps headquarters	New section.
	2500.12 Region offices	New section.
	Subpart C—Programs	New subpart designation.
	2500.20 Program descriptions	New section.
	2500.21 Focus areas	New section.
	Subpart D—Logos	New subpart designation.
2500.2 Description of Logos	2500.30 Description of logos	Redesignated without substantive change.
2500.3 Retirement of Logos	2500.31 Retirement of logos	Redesignated without substantive change.
2500.4 Authority to affix logos	2500.32 Authority to affix logos	Redesignated without substantive change.

The proposed new sections would describe AmeriCorps':

- Statutory basis and origination;
- Purpose, to administer the programs established under the national service laws; and mission, to improve lives, strengthen communities, and foster civic engagement through service and volunteering;
- Organization, including the roles of the Chief Executive Officer and the Board of Directors;
- Headquarters, including leadership positions; and region offices, referring to AmeriCorps' website for details on contact information;
- Four main national service programs: AmeriCorps NCCC, AmeriCorps Seniors, AmeriCorps State and National, and AmeriCorps VISTA; and
- Focus areas, which include but are not limited to, disaster services, economic opportunity, education, environmental stewardship, healthy futures, and veterans and military families.

Proposed edits to the sections addressing AmeriCorps' logos specify the logos' fonts and the direction of the flag in the logos and make other minor grammatical changes.

II. Regulatory Analyses

A. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this is not a significant regulatory action.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), AmeriCorps certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, AmeriCorps has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for rules that are expected to have such results.

C. Unfunded Mandates Reform Act of 1995

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or Tribal Governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

D. Paperwork Reduction Act

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information display valid control numbers. This proposed rule does not include any information collections

requiring approval by the Office of Management and Budget.

E. Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rulemaking does not have any Federalism implications, as described above.

F. Takings (E.O. 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this proposed rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

G. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rulemaking: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

AmeriCorps recognizes the inherent sovereignty of Indian Tribes and their right to self-governance. We have evaluated this rulemaking under our consultation policy and the criteria in E.O. 13175 and determined that this proposed rule does not impose substantial direct effects on Federally recognized Tribes.

I. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each proposed rule we publish must: (a) be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible. If you feel that we have not met these requirements, please send us comments by one of the methods listed in the **ADDRESSES** section. To help us revise the rule, your comments should be as specific as possible.

List of Subjects in 45 CFR Part 2500

Organization and functions (Government agencies).

■ For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service proposes to revise 45 CFR part 2500 to read as follows:

PART 2500—AMERICORPS STATEMENT OF ORGANIZATION, AGENCY OPERATING NAME, AND LOGOS

Subpart A—Introduction

Sec.
2500.1 Creation and authority.
2500.2 Agency operating name.
2500.3 Purpose and mission.

Subpart B—Organization

2500.10 General.
2500.11 AmeriCorps leadership.
2500.12 Region offices.

Subpart C—Programs

2500.20 Program descriptions.
2500.21 Focus areas.

Subpart D—Logos

2500.30 Description of logos.
2500.31 Retirement of logos.
2500.32 Authority to affix logos.

Authority: 5 U.S.C. 552(a)(1); 42 U.S.C. 4950, *et seq.,* as amended; 42 U.S.C. 12501 *et seq.,* as amended; section 203(c), Pub. L. 103–82, 107 Stat. 892 (42 U.S.C. 12651 note); Proc. 6662, 59 FR 16507, 3 CFR, 1994 Comp., p. 22).

Subpart A—Introduction

§ 2500.1 Creation and authority.

The National and Community Service Trust Act of 1993 established the Corporation for National and Community Service (CNCS) as a Federal agency, organized in the form of a Government corporation within the Executive Branch, to administer the national service programs authorized by the National and Community Service Act of 1990. CNCS also administers the national service programs authorized by the Domestic Volunteer Service Act of 1973, as amended, and previously administered by the former Federal ACTION Agency.

§ 2500.2 Agency operating name.

(a) The Corporation for National and Community Service has adopted AmeriCorps as its official agency operating name.

(b) Use of AmeriCorps as the agency operating name incorporates the Corporation for National and Community Service by reference.

§ 2500.3 Purpose and mission.

AmeriCorps' purpose is to administer the programs established under the national service laws. AmeriCorps' mission is to improve lives, strengthen communities, and foster civic engagement through service and volunteering.

Subpart B—Organization

§ 2500.10 General.

(a) A Chief Executive Officer (CEO) heads AmeriCorps. The CEO has authority and control over AmeriCorps personnel, except those in the Agency's Office of Inspector General, and is responsible for exercising the powers and fulfilling the duties that are not reserved to the Board of Directors.

(b) The Board of Directors has responsibility for setting AmeriCorps' overall policy, reviewing AmeriCorps' strategic plan, and fulling other duties for which it is responsible under the national service laws.

(c) AmeriCorps consists of headquarters and region offices, which serve the States and Territories.

§ 2500.11 AmeriCorps leadership.

(a) AmeriCorps' leadership conducts overall planning, coordination of programs, and all supporting internal operations. AmeriCorps leadership includes, but is not limited to, the following AmeriCorps officials:

(1) CEO
(2) Chief of Staff
(3) General Counsel
(4) Chief Operating Officer
(5) Chief Financial Officer
(6) Chief Program Officer
(7) Chief Diversity and Inclusion Officer
(8) Directors of AmeriCorps programs and offices

(b) AmeriCorps' public website contains current information on Agency leadership at *www.americorps.gov/about/our-team/our-leadership.*

§ 2500.12 Region offices.

(a) AmeriCorps' region offices serve the States and Territories. The AmeriCorps website contains contact information for each of these region offices at *www.americorps.gov/contact/region-offices.*

(b) AmeriCorps NCCC has a campus facility in each of its regions, which serve the States and Territories. The AmeriCorps website contains current information on the locations of and contact information for each of the

NCCC regions at *www.americorps.gov/contact/americorps-nccc-regions.*

Subpart C—Programs

§ 2500.20 Program descriptions.

(a) AmeriCorps operates four main national service programs: AmeriCorps NCCC, AmeriCorps Seniors, AmeriCorps State and National, and AmeriCorps VISTA. Additional information on each of these programs and additional AmeriCorps programs is available at *www.americorps.gov.*

(1) AmeriCorps NCCC is a full-time residential service program for individuals aged 18 to 24 (unless otherwise authorized), as defined by statute. Individuals serving in the NCCC program complete team-based service projects that respond to priority national and community needs. AmeriCorps NCCC program staff recruit, train, and manage volunteers (called ''members'') and partner with organizations that serve as project sponsors. FEMA Corps is a sub-program that AmeriCorps NCCC manages in partnership with the Federal Emergency Management Agency. It places members in service positions to perform disaster public assistance, planning, preparedness, and recovery activities.

(2) AmeriCorps Seniors focuses on providing service opportunities for individuals aged 55 years or older. It operates four national service programs: the Foster Grandparent Program, Senior Companion Program, RSVP, and the Senior Demonstration Program. Under each of these programs, AmeriCorps Seniors provides grants to sponsoring organizations to meet priority national and community needs. The sponsoring organizations then recruit and enlist local volunteers, and address performance measures as required by grant terms and conditions.

(3) AmeriCorps State and National provides grants to States, Territories, Indian Tribes, public and private nonprofit organizations, local governments, and institutions of higher education to carry out national service programs, offering a wide range of service opportunities. In addition to grant funds to support direct programming, AmeriCorps State and National also provides general operating funding for State service commissions.

(4) AmeriCorps VISTA is a program for individuals aged 18 and older to participate in full-time service to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States. AmeriCorps VISTA partners with local organizations to recruit, select, train, and assign volunteers (''members'') to work on projects at a sponsoring organization or one of its project sites.

(b) In addition to its four main national service programs, AmeriCorps also operates several additional programs and activities. These include the Martin Luther King, Jr., Day of Service; the September 11th Day of Service; the Volunteer Generation Fund; and other national service programs that AmeriCorps establishes through agreements with other Federal agencies.

§ 2500.21 Focus areas.

Through its programs, AmeriCorps provides funding and volunteer opportunities to address pressing unmet human, educational, environmental, and public safety needs of the United States, without displacing existing workers, and to meet the additional purposes set out in the national service laws. AmeriCorps' focus areas include, but are not limited to, disaster services, economic opportunity, education, environmental stewardship, healthy futures, and veterans and military families.

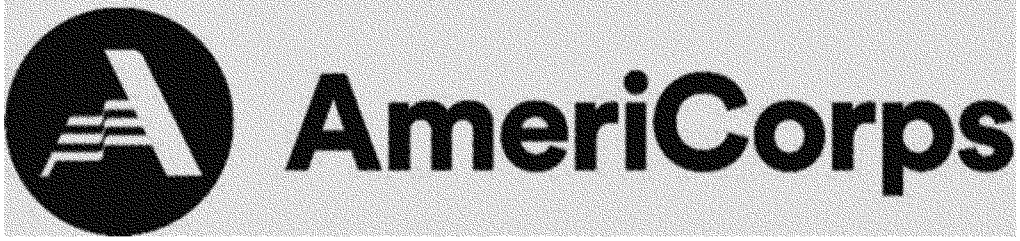
Subpart D—Logos

§ 2500.30 Description of logos.

(a) The AmeriCorps logo (Logo) is the key element in agency identification. It provides a visual representation of the Agency's role to unite America by bringing people together to serve communities. It is symbolic of the way AmeriCorps members and volunteers lift and improve communities through service and volunteering. This Logo links the graphic communications of all Agency programs.

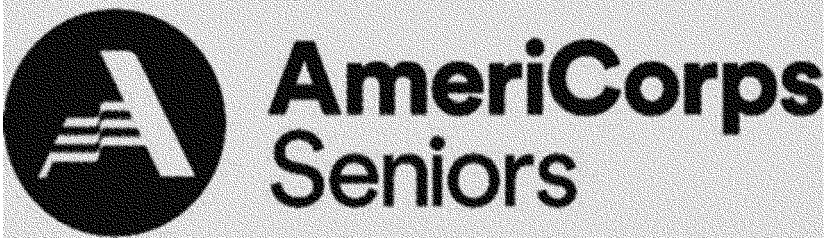
(b) The Logo is an image of a solid circle containing an A where the right-hand pillar is a solid block line and the left-hand pillar is represented by a flagpole with the flag in motion, appearing to fly from the left to the right and forming the A as the flag intersects with the other pillar. AmeriCorps appears in bold to the right of the mark.

Figure 1 to paragraph (b)



(c) The AmeriCorps Seniors logo (Seniors Logo) identifies the highlighted AmeriCorps Seniors programs and represents the Agency's commitment to programs and volunteer opportunities for older Americans.

Figure 2 to paragraph (c)



(d) The Seniors Logo contains the word Seniors beneath AmeriCorps, to the right of the circle containing the A.

§ 2500.31 Retirement of logos.

The agency officially retired the day-to-day use of all pre-existing logos, emblems, and other insignia, except the Days of Service logos, but does not relinquish the legal rights to any retired logos.

§ 2500.32 Authority to affix logos.

Restrictions on the use of AmeriCorps logos are found in 45 CFR 2540.500 through 2540.560.

Fernando Laguarda,

General Counsel.

[FR Doc. 2023–08403 Filed 5–1–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0043; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BD13

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Black-Capped Petrel With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; document availability and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 9, 2018, proposed rule to list the black-capped petrel (*Pterodroma hasitata*) as a threatened species under the Endangered Species Act of 1973, as amended (Act), with a rule issued under section 4(d) of the Act to provide for the conservation of this species. We are reopening the comment period to present significant new information we have received since 2018 that is relevant to our consideration of the status of the black-capped petrel and allow interested parties to comment. Comments submitted during the 2018 comment period do not need to be resubmitted and will be fully considered in preparation of our final rule. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information.

DATES: The comment period for the proposed rule published on October 9, 2018, at 83 FR 50560 is reopened. We will accept comments received or postmarked on or before June 1, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2018–0043, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2018–0043, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: Supporting materials including the new information are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0043.

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, *caribbean_es@fws.gov;* telephone 786–244–0081. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2018, we proposed to list the black-capped petrel as a threatened species with a rule issued under section 4(d) of the Act to provide for the conservation of this species (83 FR 50560). Please refer to the 2018 proposed rule for information about the black-capped petrel, its status, its threats, and a summary of factors affecting the species. The proposed rule also includes detailed descriptions of previous Federal actions concerning this species. At the time of the proposed rule, we also publicly made available the Species Status Assessment (SSA) report that includes additional details regarding the species. The SSA report (version 1.1; Service 2018) can be found at *https://www.regulations.gov,* docket no. FWS–R4–ES–2018–0043, as Supporting and Related Materials.

Since the 2018 proposed rule, we have received new or updated information regarding the black-capped petrel's life history, range, habitat, and factors influencing the species' viability. The information indicates the magnitude of threats is likely greater than we had previously assessed. A

description of the new information is provided below.

New Information

New information associated with the species' occurrence at sea indicates an expansion of the species' range within the northern Gulf of Mexico. Recent sightings of individual black-capped petrels in the central and northeastern Gulf of Mexico show greater use of this marine region by the species than previously documented, resulting in a confirmed range expansion (Jodice et al. 2021, entire). Additionally, recent satellite tracking studies of individual black-capped petrels identified near-shore areas off the northern coast of Central and South America as areas where the species forages during the breeding season, and these areas may have previously been overlooked or underestimated (Leopold et al. 2019, entire).

The new information also includes updated data on the amount and condition of the species' nesting areas. The black-capped petrel is known to nest only on the island of Hispaniola in high-elevation areas in Haiti and Dominican Republic. The currently known nesting areas include three in Haiti (Pic Macaya, Pic La Visite, and Morne Vincent) and three in Dominican Republic (Sierra de Bahoruco/Loma del Toro, Valle Nuevo National Park, and Loma Quemada). The amount of suitable nesting habitat is 70 percent less than what we previously estimated in 2018 (Satgé et al. 2021, pp. 583–586). We also now have recent nesting data from survey results on Hispaniola for years beyond 2018; however, not all sites were surveyed each year (Brown and Jean 2020, entire; Brown and Jean 2021, entire; International Black-capped Petrel Conservation Group (IBPCG) 2019, pp. 2–4; IBPCG 2020, pp. 3–4; IBPCG 2021, pp. 3–4; IBPCG 2022, pp. 3–4). Across all nesting colonies, the total number of breeding adults at each site is uncertain.

The nesting colony at Pic Macaya in Haiti once accounted for 5 percent of the total breeding population; however, the habitat conditions have deteriorated, and no nesting has been detected here in the past 20 years. Ongoing impacts to the species and its nesting habitat in this area include fires, invasive mammals, deforestation, and habitat loss (Goetz et al. 2012, p. 5; Wheeler et al. 2021, p. A2–84), with up to 56 percent of total forest cover lost in the period 2000–2018 (Satgé et al. 2021, p. 586). This site is considered extirpated, based on recent surveys that did not detect any nesting activity at this site.

Pic La Visite in Haiti includes the most significant breeding colony of the black-capped petrel and includes nearly half of the total known breeding population for the species. In 2021, one study found low nest success with only 16 of 35 nests fledging a chick (Brown and Jean 2021, pp. 2, 4). All known nests are concentrated in an area of roughly 2.5 acre (ac) (1 hectare (ha)) (IBPCG 2021, entire; Wheeler et al. 2021, pp. 10, A2–73). New information regarding the Pic La Visite nesting area indicates the ongoing deforestation due to agricultural encroachment is accelerating (Hedges et al. 2018, entire).

The Morne Vincent nesting area in Haiti is approximately 32 ac (13 ha) (Wheeler et al. 2021, p. A2–75). During the most recent surveyed nesting season (2020–2021), an 87 percent success rate was reported for the 15 nests monitored (Brown and Jean 2020, p. 3; IBPCG 2021, p. 4). The primary cause of nest failure is predation (Wheeler et al. 2021, p. 16).

The Loma del Toro nesting area is in the Sierra de Bahoruco of the Dominican Republic and is approximately 370 ac (150 ha) (Wheeler et al. 2021, p. A2–77). Since 2018, cumulative monitoring of 95 petrel nesting attempts suggests that overall success rates (53 percent) are lower than the nearby Morne Vincent nesting area in Haiti (IBPCG 2018, entire; IBPCG 2019, entire; IBPCG 2020, entire; IBPCG 2021, entire). During the recent petrel nesting season (2021–2022), nest success estimated from the 23 nests monitored in this colony declined to 22 percent (E. Rupp, Grupo Jaragua, in litt). Historical estimates of nest success in this area are unavailable prior to the introduction of exotic mammals into black-capped petrel habitat. Deforestation is occurring in the vicinity of the known black-capped petrel nesting area, where an 11 percent decrease in forest cover was documented from 2000 through 2018 (Satgé et al. 2021, p. 583). Moreover, extensive forest fires and severe nest predation by stray dogs have occurred in this nesting area (IBPCG 2021, p. 1).

Valle Nuevo National Park, Dominican Republic, was a suspected nesting area prior to 2017 when nesting was confirmed. To date, 13 black-capped petrel nests have been identified within an area of approximately 35 ac (14 ha) (Wheeler et al. 2021, p. A2–81; IBPCG 2021, p. 4). As with all other black-capped petrel nesting colonies, petrels nesting in Valle Nuevo face the threats of agricultural activities, invasive mammals, habitat loss, and communication towers (Goetz et al. 2012, p. 5; Wheeler et al. 2021, pp. 12–16), in addition to the increasing threat posed by encroachment of invasive ferns, which block access to nest sites (Wheeler et al. 2021, p. 14; Davis 2019, p. 58). All nests at Valle Nuevo failed to fledge young during both the 2020 (n=13) and 2021 (n=17) nesting seasons, and predation by the invasive mongoose is believed to be the cause (IBPCG 2021, p. 4; E. Rupp, Grupo Jaragua, in litt).

Loma Quemada, Dominican Republic, is the lowest elevation petrel nesting colony (Wheeler et al. 2021, p. A2–80). The habitat at Loma Quemada is similar to Loma del Toro, located approximately 12.4 mi (20 km) to the west, and it shares many of the same threats from habitat loss and degradation, anthropogenic fires, and predation and nest destruction by invasive mammals such as feral pigs (Wheeler et al. 2021, p. A2–80). As of October 2020, seven petrel nests have been discovered within the approximately 27-ac (11-ha) area. Two (29 percent) of these nests fledged young during the 2020–2021 nesting season (IBPCG 2021, p. 4). In the previous (2019–2020) season, 33 percent of nests (2 of 6) were successful (IBPCG 2020, p. 5). Preliminary data from the 2021–2022 season indicates a further decline in nest success to 17 percent (E. Rupp, Grupo Jaragua, in litt).

The threats acting on the species on its breeding grounds on Hispaniola were described in detail in the proposed rule (83 FR 50560) and the SSA report (Service 2018, pp. 14–28). We received new information regarding invasive mammalian predators, harvesting of tree ferns, development, primary forest loss, terrestrial mining, coastal and offshore energy development, and climate change that provide a better understanding of the imminence and magnitude of the threats acting on the species and its habitat.

Introduced mammals such as mongoose, dogs, cats, and pigs on the breeding grounds cause direct and indirect mortality to adult petrels and chicks on the nest. New information from camera trap studies near nest burrows shows the threat is more prevalent and imminent than previously described. Some of the survey results documented dogs and mongoose depredating black-capped petrel chicks and adults. Abandonment of an active petrel nest (*i.e.,* a nest with an egg or chick) due to repeated incursions by a mongoose was recently documented in the Dominican Republic (IBPCG 2019, p. 4). Mongoose predation was observed between early March and late May, resulting in the mortality of at least seven petrel chicks in Valle Nuevo during the 2020–2021 breeding season

(Grupo Jaragua 2021, pp. 3–4). No nests in Valle Nuevo were known to be successful over two recent seasons (2020 and 2021), largely due to mongoose predation (IBPCG 2021, p 1; E. Rupp, Grupo Jaragua, in litt).

Recent camera trapping in the Pic La Visite colony showed that a single dog depredated 18 of 35 known active nests in 2021 (Brown and Jean 2021, pp. 4–5). At least nine dogs also killed at least 11 adult black-capped petrels during the 2020–2021 breeding season (Brown and Jean 2021, p. 5; Satgé 2021, p. 2; Grupo Jaragua 2021, p. 2).

Feral cats also affect the petrels on their nesting grounds. The recent loss of at least nine active petrel nests in the Dominican Republic was attributed to a single feral cat (IBPCG 2019, p. 4). Across the nesting sites that have been surveyed in Haiti and Dominican Republic, new information indicates the threat of introduced mammals on the black-capped petrel is more imminent than described in the 2018 proposed rule. The magnitude of this threat is greater than previously documented with potential catastrophic effects to reproduction during a nesting season.

In petrel nesting areas of Haiti, harvesting of tree ferns to sell as substrate for ornamental plants has increased (A. Brown, in litt.). This activity disrupts and destabilizes soil in the vicinity of nest burrows, directly disturbing nests and potentially leading to burrow collapse. At least 14 active nests at 1 site were destroyed during the 2020–2021 nesting season due to tree fern harvesting activities (Brown and Jean 2021, p. 4).

We have new information associated with development on Hispaniola, particularly around Pedernales, Dominican Republic, a coastal area along the southwestern border of Dominican Republic and Haiti (DGAPP 2021, entire). Construction has begun on a large-scale development that will include an international airport, hotels, roads, and other infrastructure associated with tourism and recreation. This development is about 18 mi (29 km) from two nesting areas (Loma del Toro and Loma Quemada) and is along the petrel's flight path between nesting and foraging areas at sea. Impacts to the species may include those associated with artificial lighting and collisions with structures and aircraft.

Loss and degradation of nesting habitat due to deforestation continues to be one of the most significant and persistent threats to the black-capped petrel (Goetz et al. 2012, entire; Wheeler et al. 2021, pp. 12–16). Primary mechanisms of deforestation in the region include urbanization, clearing of land for pastures or agriculture, felling of trees for building materials, and charcoal production. Estimates of current deforestation, which were considered in our 2018 proposed rule, on Hispaniola range from over 90 percent for the Haitian portion to slightly less than 90 percent for the Dominican Republic portion (Castro et al. 2005, p. 7; Simons et al. 2013, p. S31; Churches et al. 2014, entire). Deforestation in the Haitian nesting areas is particularly significant for the black-capped petrel, given that up to 70 percent of all active nest sites of the species occur within Haiti (Goetz et al. 2012, p. 5; Wheeler et al. 2021, p. 10). New information projects that all primary forests within Haiti are to be lost by 2035 (Hedges et al. 2018, entire).

Recent quantitative assessments of deforestation in the Dominican Republic also indicate that the rate of deforestation in and around petrel nesting colonies and areas of suitable nesting habitat has accelerated in recent years, ranging from 3.8 percent to 56 percent in the period 2000–2018 (Lloyd and Leon 2019, p. 5; Satgé et al. 2021, p. 583). We also received new information regarding deforestation due to fires in the Dominican Republic. The frequency and intensity of fires in and around petrel nesting areas has increased in recent years, further exacerbating and contributing to deforestation and habitat degradation in the region (Batlle and Ramon 2021, p. 36; IBPCG 2021, p. 1). The impacts from forest fires create conditions for invasive plant species, such as the terrestrial fern (*Dicranopteris pectinata*), to colonize and block access to nesting substrate and burrows (Wheeler et al. 2021, p. 14).

New information has been provided regarding mining of rare earth elements (REE) on Hispaniola. ''Economically significant'' amounts of REE were recently discovered in Sierra del Bahoruco, Dominican Republic, in association with former bauxite mines and adjacent areas within 5 mi (8 km) of the Loma Quemada nesting area (Proenza et al. 2017, p. 1321; Proenza et al. 2021, p. 21). These products are in high demand globally, as they are essential for production of numerous modern technologies, including cell phones, solar cells, and electric vehicles (Dutta et al. 2016, p. 183; Proenza et al. 2017, p. 1321). Global demand of REE is increasing at the rate of 5 percent per year, requiring a steady and dependable supply of these minerals in the future (Dutta et al. 2016, p. 184). At the time of our 2018 proposal, we noted that the rapidly increasing global demand for REE, and the substantial economic importance of the mining sector to the Dominican Republic, likely foretold a resurgence and expansion of large-scale mineral exploration and extraction in the region (Dutta et al. 2016, p. 185; Redwood 2015, p. 12). Since that time, the Government of the Dominican Republic established the ''Reserva Fiscal Ávila'', an area of 36,744 ac (14,876 ha) designated for the exploration, evaluation, and development of REE reserves in the Sierra del Bahoruco (Proenza et al. 2021, p. 22). This area is approximately 3 miles (5 km) from the Loma Quemada nesting area.

We also received new information regarding planned offshore wind energy projects that fall within the black-capped petrel's range. An area currently proposed for development off the coast of North Carolina overlaps with the species' core foraging area along the Gulf Stream and nutrient-rich waters (Avangrid 2022, p. 5). Future wind energy development in the Gulf of Mexico is anticipated. Studies have been completed to identify areas for potential renewable energy development; Texas and Louisiana have some of the highest wind capacity in the northern Gulf of Mexico (BOEM 2022a, entire; BOEM 2022b, entire). Offshore wind projects may affect the species through collisions with turbines, artificial lighting, displacement, and disturbance to the marine environment and prey species near turbines. For example, changes in turbidity may influence predator-prey interactions, with predators being attracted and prey avoiding affected areas (Van Berkel et al. 2020, pp. 113–114).

Offshore oil and gas activity may also affect the species while on its foraging grounds at sea. Extensive oil and gas activity occurs in the northern Gulf of Mexico. With the expansion of the species' documented range to include this area, the species may be at greater risk of encountering impacts from oil and gas activities than previously described (Satgé et al. 2019, entire).

Public Comments

We will accept written comments and information during this reopened comment period on our proposed rule to list the black-capped petrel as a threatened species. We will consider information from all interested parties. We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the new

information associated with this proposed rule.

We particularly seek comments concerning new information presented in this **Federal Register** document and its relationship to the status of the black capped petrel and any other information. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information.

Comments should be as specific as possible. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from the proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0043 and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the members of the Fish and Wildlife Service's Species Assessment Team and the Caribbean Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–09025 Filed 5–1–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 84
Tuesday, May 2, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–CN–22–0084]

Advisory Committee on Universal Cotton Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; extension of the nomination application period for the advisory committee on universal cotton standards.

SUMMARY: On March 31, 2023, the U.S. Department of Agriculture (USDA) published in the **Federal Register** a notice of intent to re-establish and solicit nominations for membership on the USDA Advisory Committee on Universal Cotton Standards (Committee). The nomination application period for this notice has been extended to provide additional opportunities for interested persons to submit their nomination application. The nomination application period for individuals who wish to serve and/or submit nominations to recommend potential candidates for the Advisory Committee on Universal Cotton Standards has been extended until July 1, 2023. USDA seeks nominations of individuals to be considered for selection as Committee members. Re-establishment of the Committee is necessary and in the public interest. The Committee will review official Universal Standards for American Upland cotton prepared by USDA and make recommendations to the Secretary of Agriculture regarding the establishment or revision of standards.

DATES: The deadline for submitting nominations and application materials for membership on the Advisory Committee on Universal Cotton Standards as published on March 31, 2023, (88 FR 19238), has been extended. Nominations and application materials must be submitted by July 1, 2023.

ADDRESSES: Nominations and application materials should be sent to Gretchen Deatherage, Designated Federal Official, Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Room 5, Memphis, TN 38133, or by email to *Gretchen.Deatherage@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Deatherage, Designated Federal Official; Phone: (901) 384–3030; Email: *Gretchen.Deatherage@usda.gov.*

SUPPLEMENTARY INFORMATION: A notice published in the March 31, 2023, **Federal Register** announced the Secretary of Agriculture's (Secretary) intent to re-establish the Committee for two years. The notice explained the Committee's composition of foreign and domestic cotton industry representatives and explained the Committee's purpose, which would be to review official Universal Standards for U.S. Upland cotton prepared by USDA and make recommendations to the Secretary regarding establishment or revision of the standards established under the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The notice also described the terms for Committee appointees, as well as the process for nominating members and submitting application materials.

The deadline for submitting nominations and application materials was originally announced as May 1, 2023. USDA has received multiple industry requests for an extension to the application period to provide interested persons adequate time to apply. USDA is extending the deadline for nominations and submission of written application materials, which must be received on or before July 1, 2023.

Dated: April 24, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–09231 Filed 5–1–23; 8:45 am]

BILLING CODE 3410–02–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 June 1, 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.

Economic Research Service

Title: Data Security Requirements for Accessing Confidential Data.

OMB Control Number: 0536–NEW.

Summary of Collection: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. Specifically, the Evidence Act requires OMB to establish a common application process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply for access to confidential data assets collected, accessed, or acquired by a

statistical agency or unit. This new process will be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by law.

Need and Use of the Information: Data collected, accessed, or acquired by statistical agencies and units is vital for developing evidence on conditions, characteristics, and behaviors of the public and on the operations and outcomes of public programs and policies. Access to confidential data on businesses, households, and individuals from federal statistical agencies and units enables agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals to contribute evidence-based information to research and policy questions on economic, social, and environmental issues of national, regional, and local importance. This evidence can benefit the stakeholders in the programs, the broader public, as well as policymakers and program managers at the local, State, Tribal, and National levels.

Description of Respondents: Individuals or households.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 96.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–09254 Filed 5–1–23; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket No. FSA–2023–0010]

Information Collection Request; Power of Attorney

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act requirement, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension and a revision of a currently approved information collection associated with the form of the Power of Attorney. This information collection is used to support the FSA, Commodity Credit Corporation (CCC), Natural Resources Conservation Service (NRCS), Federal Crop Insurance Corporation (FCIC) and Risk Management Agency (RMA) in conducting business and accepting signatures on certain documents from individuals acting on behalf of other individuals or entities.

DATES: We will consider comments that we receive by July 3, 2023.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments, identified by Docket ID: FSA–2023–0010 in the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Jody Kenworthy.

FOR FURTHER INFORMATION CONTACT: Jody Kenworthy; by telephone: 202–290–4230; or by email: *jody.kenworthy@usda.gov.* Individuals who require alternative means for communication should contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney.

OMB Control Number: 0560–0190.

Expiration Date of Approval: August 31, 2023.

Type of Request: Revision and extension.

Abstract: Individuals or entities that want to appoint another to act as an attorney-in-fact in connection with certain FSA, CCC, NRCS, FCIC, and RMA programs and related actions must complete a form of FSA–211, Power of Attorney form. The form is used by a grantor to appoint another to act on the individual's or entity's behalf for certain FSA, CCC, NRCS, FCIC and RMA programs or other specific actions, giving the appointee legal authority to enter into certain programs, agreements, or contracts, or other specific actions on the grantor's behalf. The form also provides FSA, CCC, NRCS, FCIC and RMA a source to verify an individual's authority to sign and act for another in the event of errors or fraud. The information collected on the form is limited to grantor's name, signature and identification number, the grantee's address, and the applicable FSA, CCC, NRCS, FCIC and RMA programs or transactions.

The burden hours in this collection increased by 1,526 hours since the last OMB approval. The reason for the increase in hours is due to the increase in FSA customers during the pandemic. The increase in customers is due to the multiple pandemic programs that provided help to producers who were not normally covered by FSA programs.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses multiplied by the estimated total annual of responses.

Estimate of Average Time To Respond: Public reporting burden for collecting information under this notice is estimated to average 0.4843 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Type of Respondents: Individuals and households.

Estimated Number of Respondents: 16,000.

Estimated Average Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 16,000.

Estimated Average Time per Response: 0.4843.

Estimated Total Annual Burden on Respondents: 7,750 hours.

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden of the collection of information including the validity of the methodology and assumptions used;

(3) Evaluate the quality, utility and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses where provided, will be made a matter of public record. Comments will be summarized and included in the request for OMB approval.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2023–09213 Filed 5–1–23; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Risk Management Agency

[Docket No. FCIC–23–0002]

Notice of Funding Availability; Additional Payment to Approved Insurance Providers

AGENCY: Federal Crop Insurance Corporation and Risk Management Agency, U.S. Department of Agriculture (USDA).

ACTION: Notification of funding availability.

SUMMARY: The Risk Management Agency (RMA), on behalf of the Federal Crop Insurance Corporation (FCIC), announces the availability of funding under the Additional Payment (ADD PAY) Program. The ADD PAY Program is a one-time additional payment to Approved Insurance Providers (AIP) administering eligible crop insurance contracts for 2021 reinsurance year specialty crops. The total funding available for the ADD PAY Program is $25 million. Funding for the ADD PAY Program will be distributed to AIPs proportionally based on their respective liabilities for eligible crop insurance contracts for 2021 reinsurance year specialty crops.

FOR FURTHER INFORMATION CONTACT: David Zanoni; telephone: (816) 507–9302; email: *david.zanoni@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone).

SUPPLEMENTARY INFORMATION:

Background

This document specifies the terms and conditions of the ADD PAY Program. The Risk Management Agency, on behalf of FCIC, will administer the ADD PAY Program. The ADD PAY Program will provide an additional payment to AIPs administering eligible crop insurance contracts for specialty crops for the 2021 reinsurance year.

Funding is for the administration of crop insurance contracts for specialty crops for the 2021 reinsurance year.

Definitions

ADD PAY means Additional Payment Program.

Annual settlement means the settlement of accounts between the Company and FCIC for the reinsurance year, beginning with the October monthly transaction cutoff date following the end of the subsequent reinsurance year and continuing monthly thereafter, as necessary.

A&O Subsidy means the subsidy for the administrative and operating expenses paid by FCIC on behalf of the policyholder to the Company for additional coverage level crop insurance contracts in accordance with section 508(k)(4) of the Federal Crop Insurance Act (7 U.S.C. 1508(k)(4)).

Approved Insurance Provider (AIP) means a legal entity (also referred to in this document as ''the Company'') which has entered into a Standard Reinsurance Agreement (SRA) with FCIC for the applicable reinsurance year.

Eligible crop insurance contract means an insurance contract with an eligible producer:

(1) Covering an agricultural commodity authorized to be insured under the Federal Crop Insurance Act and approved for sale by FCIC,

(2) With terms and conditions in effect as of the applicable contract change date,

(3) That is sold and serviced in accordance with the Federal Crop Insurance Act, FCIC regulations, FCIC procedures, and the SRA, and

(4) That has a sales closing date within the reinsurance year.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA that administers the Federal Crop Insurance Program.

Liability means your total amount of insurance, value of your production guarantee, or revenue protection guarantee for the unit determined in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

Net book premium means the premium amount established by FCIC for eligible crop insurance contracts in accordance with section 508(d)(2) of the Federal Crop Insurance Act (7 U.S.C. 1508(d)(2)), less any amount for A&O subsidy.

Qualifying crop insurance contract means an eligible crop insurance contract for a 2021 reinsurance year specialty crop.

Reinsurance year means the term of the SRA beginning July 1 and ending on June 30 of the following year and, for reference purposes, identified by the year containing June.

RMA means the Risk Management Agency, USDA.

Specialty crop means agricultural commodities described in section 101 of title I of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note), including fruits and vegetables, tree nuts, dried fruits, horticulture nursery crops, and other crops listed on the RMA specialty crops web page at *https://www.rma.usda.gov/en/Topics/Specialty-Crops.*

Standard Reinsurance Agreement (SRA) means the agreement between an AIP and FCIC by which the insurer transfers to FCIC certain liabilities arising from the insurer's sales of insurance policies in return for a portion of premium monies and administrative expense reimbursements.

USDA means United States Department of Agriculture.

Eligibility for ADD PAY Program

To be eligible for additional payment under the ADD PAY Program, the participant must be an AIP who administered one or more eligible crop insurance contracts for specialty crops for the 2021 reinsurance year. A complete list of the specialty crops eligible for the ADD PAY Program can be found on the RMA website at *https://www.rma.usda.gov/en/Topics/Specialty-Crops.*

Funding Available for ADD PAY Program

The total funding available for the ADD PAY Program is $25 million. Funds from section 771 of the Consolidated Appropriations Act, 2023, (Pub. L. 117–328) will be used for the ADD PAY Program.

Calculating and Accounting ADD PAY Program Amounts

The ADD Pay Program amount for each AIP will be equal to the difference between the amount to be paid pursuant to the SRA for qualifying crop insurance contracts and the amount that would be paid if such contracts were not subject to a reduction described in section III(a)(2)(G) of the SRA but subject to a reimbursement rate equal to 17.5 percent of the net book premium.

If the total additional payment sum of $25 million for the ADD PAY Program is reached or may be reached, the RMA Administrator will prorate ADD PAY amounts due so that a total of $25 million is paid. In such a case, funding for the ADD PAY Program will be distributed to AIPs proportionally based on their respective liability for qualifying crop insurance contracts.

The ADD PAY Program will be administered based on the book of business at first annual settlement date for the 2021 reinsurance year. The payment will be final upon receipt and will not be altered based on any subsequent updates to premium or

liability of qualifying crop insurance contracts made after that date.

Specifically, RMA will calculate the additional payment amounts under the ADD PAY Program as follows:

(1) For each qualifying crop insurance contract subject to a reduction described in section III(a)(2)(G) of the SRA,[1] calculate 17.5 percent of net book premium;

(2) If the result of (1) is greater than the actual A&O subsidy paid for the qualifying crop insurance contract:

(a) Subtract the actual A&O subsidy paid from the result of (1);

(b) Calculate total liability;

(3) Sum the results of (2a) by AIP;

(4) Sum the results of (3) across all AIPs;

(5) If the result of (4) is less than or equal to $25 million, then pay each AIP their respective amount from (3);

(6) If the result of (4) is greater than $25 million, then:

(a) Sum the results of (2b) by AIP;

(b) Sum the results of (6a) across all AIPs;

(c) Divide (6a) by (6b) to establish each AIP's proportion of total liability;

(d) Multiply $25 million by the result of (6c) for each AIP; and

(e) Pay each AIP their respective amount from (6d).

Paperwork Reduction Act Requirements

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the notice does not change the information collection approved by OMB under control numbers 0563–0053.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b). As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this notice will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action, and this notice serves as documentation of the programmatic environmental compliance decision.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing,[2] to which this document applies is 10.450—Crop Insurance.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or 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.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Marcia Bunger,

Manager, Federal Crop Insurance Corporation; and Administrator, Risk Management Agency.

[FR Doc. 2023–09203 Filed 5–1–23; 8:45 am]

BILLING CODE 3410–08–P

[1] See 2021 Standard Reinsurance Agreement at: *https://www.rma.usda.gov/-/media/RMA/Regulations/Appendix-2021/21sra.ashx?la=en.*

[2] See *https://sam.gov/content/assistance-listings.*

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–23–CO–OP 0005]

Notice of Funding Opportunity for the Delta Health Care Services Grant Program for Fiscal Year 2023

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This notice of funding opportunity (notice) announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2023 applications for the Delta Health Care Services (DHCS) grant program. The purpose of this program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and economic development entities in the Delta Region. There is $3 million currently available for FY 2023. All funds must support projects located in persistent poverty counties in the Delta Region and as described in the Overview section of this notice. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be submitted electronically by no later than 11:59 p.m. Eastern Time July 3, 2023 through *http://www.grants.gov* to be eligible for grant funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. Late or incomplete applications will not be eligible for funding.

ADDRESSES: This funding announcement will also be announced on *www.Grants.gov.* Applicants are encouraged to contact their respective USDA Rural Development State Office well in advance of the application deadline to discuss their Project and ask any questions about the application process. Contact information for State

Offices can be found at *http://www.rd.usda.gov/contact-us/state-offices.* Applicants may obtain program guidance and application tools from *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

To submit an application, follow the instructions for the Delta Health Care Services (DHCS) funding announcement located at *http://www.grants.gov.* Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the application deadline. You are strongly encouraged to file your application early and allow sufficient time to manage any technical issues that may arise.

FOR FURTHER INFORMATION CONTACT:

Honie Turner, Business Loan and Grant Analyst at *honie.turner@usda.gov* Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–3226; or call 202–720–1400 or email *CPgrants@usda.gov.*

For further information on program requirements under this notice, please contact the USDA Rural Development State Office in the state where the applicant's headquarters is located. A list of Rural Development State Office contacts is provided at the following link: *https://www.rd.usda.gov/about-rd/state-offices.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Delta Health Care Services Grant Program (DHCS).

Announcement Type: Notice of funding opportunity.

Funding Opportunity Number: RDBCP–DHCS–2023.

Assistance Listing: 10.874.

Dates: Application Deadline. Electronic applications must be received by *http://www.grants.gov* no later than 11:59 p.m. Eastern Time July 3, 2023, or it will not be considered for funding.

Rural Development Key Priorities:

The Agency encourages applicants to consider projects that will advance the key priorities below (more details available at *https://www.rd.usda.gov/priority-points):*

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. Purpose of the Program. The primary objective of the program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grants are awarded on a competitive basis. The maximum award amount per grant is $1,000,000.

2. Statutory and Regulatory Authority

(a) *Statutory.* The DHCS program is authorized by section 379G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008u).

(b) *Persistent Poverty Counties.* The Consolidated Appropriations Act, 2023 (Pub. L. 117–328), division A, title VII, section 736 (Section 736), allocates funding for projects in Persistent Poverty Counties. Persistent Poverty Counties as defined in section 736 is ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States[.]'' Another provision in section 736 expands the eligible population in Persistent Poverty Counties to include any county seat of such a Persistent Poverty County that has a population that does not exceed the authorized population limit by more than 10 percent. Therefore, applications for projects in Persistent Poverty County seats with populations up to 55,000 (per the 2010 Census) are eligible. Funding in the amount of $3 million has been allocated to support Persistent Poverty Counties.

3. Definitions

Academic Health and Research Institute—A combination of a medical school, one or more other health profession schools or educational training programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, or public health), and one or more owned or affiliated teaching or health systems; or a health care nonprofit organization or health system, including nonprofit medical and surgical hospitals, that conduct health related research.

Conflict of Interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, Project Funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of a conflict of interest includes when the consortium member's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Consortium—A group of three or more entities that are regional Institutions of Higher Education, Academic Health and Research Institutes, and/or Economic Development Entities located in the Delta Region that have at least one year of prior experience addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Federal Government.

Delta Region—The 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. To view the areas identified within the Delta Region visit *http://dra.gov/about-dra/dra-states.*

Economic Development Entity—Any public or non-profit organization whose primary mission is to stimulate local and regional economies within the Delta Region by increasing employment opportunities and duration of employment, expanding or retaining existing employers, increasing labor rates or wage levels, reducing outmigration, and/or creating gains in other economic development-related variables such as land values. These activities shall primarily benefit low- and moderate-income individuals in the Delta Region.

Health System—The complete network of agencies, facilities, and all providers of health care to meet the

health needs of a specific geographical area or target population.

Institution of Higher Education—A postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

Nonprofit Organization—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Project—All activities funded by the DHCS grant.

Project Funds—Grant funds requested plus any other contributions to the proposed Project.

Rural and rural area—Includes (1) Any area of a State other than (a) a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States and (b) any urbanized area contiguous and adjacent to a city or town described in (a); and (2) Urbanized areas that are rural in character as defined by 7 U.S.C. 1991(a)(13). For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

State—Includes each of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

4. Application of Awards

Awards under the DHCS Program will be made on a competitive basis. The Agency will review, evaluate, and score applications received in response to this notice.

B. Federal Award Information

Type of Award: Grant.
Fiscal Year Funds: FY 2023.
Available Funds: $3 million.
Award Amounts
Maximum Award: $1,000,000.
Minimum Award: $50,000.
Anticipated Award Date: September 30, 2023.
Performance Period: Up to 24 months.
Renewal or Supplemental Awards: Not applicable.
Type of Assistance Instrument: Financial Assistance Agreement (Grant Agreement).

C. Eligibility Information

1. Applicant

Applicants must meet all the following eligibility requirements. Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. Applicants that fail to submit the required elements by the application deadline will be deemed ineligible and will not be evaluated further. Information submitted after the application deadline will not be accepted. Grants funded through DHCS may be made to a Consortium as defined in section A.3 of this notice. One member of the Consortium must be designated as the lead entity by the other members of the Consortium and have legal authority to contract with the Federal Government.

The lead entity is the recipient (see 2 CFR 200.1) of the DHCS grant funds and accountable for monitoring and reporting on the Project performance and financial management of the grant. It is expected that the recipient will make subawards in the form of a grant, cooperative agreement, or contract, as appropriate, to the other members of the Consortium. If a grant or cooperative agreement is awarded, the organization receiving the subaward is a subrecipient (see 2 CFR 200.1 and the recipient is responsible for complying with all applicable requirements of 2 CFR part 200, including provisions for making and monitoring an award. If a contract is awarded, the organization receiving the subaward is a contractor, and the recipient is responsible for following its written procurement procedures and complying with the Federal Acquisition Regulation. Both subrecipients and contractors are required to comply with all applicable laws and regulations, including performance and financial reporting, as described in their award document.

(a) An applicant is ineligible if they do not submit ''Evidence of Eligibility'' and ''Consortium Agreements'' as described in section D.2. of this notice.

(b) An applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the DO NOT PAY system to verify if the applicant has been debarred or suspended or has an outstanding judgment against them.

(c) Any corporation (1) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (2) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the Consolidated Appropriations Act, 2023 (Public Law 117–103), division E, title VII, sections 744 and 745 unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

(d) Applications will be deemed ineligible if the application includes any funding restrictions identified under section D.6.

2. Cost Sharing or Matching

There are no cost sharing or matching requirements associated with this grant. However, if you are adding any other contributions to the proposed Project, you must provide documentation indicating who will be providing the matching funds, the amount of funds, when those funds will be provided, and how the funds will be used in the Project budget. Examples of acceptable documentation include: a signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the Project. The matching funds you identify must be for eligible purposes and included in your work plan and budget. Additionally, expected program income may not be used as matching funds at the time you submit your application. If you choose, you may use a template to summarize the matching funds. The template is available either from your State Office or the program website at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

3. Other

(a) *Use of Funds.* Your application must propose to use Project Funds for eligible purposes. Eligible Project purposes include the development of: (1) health care services; (2) health education programs; (3) health care job training programs; and (4) the development and expansion of public health-related facilities in the Delta Region.

(b) *Project Eligibility.* The proposed Project must take place within the Delta Region as defined in this notice. However, the applicant need not propose to serve the entire Delta Region. All funds must support projects located in persistent poverty counties as described in paragraph A.2.(b).

(c) *Project Input.* Your proposed Project must be developed based on input from local governments, public health care providers, and other entities in the Delta Region.

(d) *Grant Period Eligibility.* All awards are limited to up to a 24-month grant period based upon the complexity of the Project. Your proposed grant period should begin no earlier than October 1, 2023 and should end no later than 24 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the financial assistance agreement is executed by the Agency—and your grant period end date will be adjusted accordingly. Your Project activities must begin within 90 days of the date of award. If you request funds for a time period beginning before October 1, 2023 and/or ending later than 24 months from that date, your application will be ineligible. The length of your grant period should be based on your Project's complexity, as indicated in your application work plan.

(e) *Multiple Application Eligibility.* The Consortium, including its members, is limited to submitting one application for funding under this notice. We will not accept applications from Consortiums that include members who are also members of other Consortiums that have submitted applications for funding under this notice. If we discover that a Consortium member is a member of multiple Consortiums with applications submitted for funding under this notice, all applications will be considered ineligible for funding.

(f) *Satisfactory Performance Eligibility.* If you have an existing DHCS award, you must be performing satisfactorily to be considered eligible for a new DHCS award. Satisfactory performance includes being up to date on all financial and performance reports as prescribed in the grant award, and current on tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If you have any unspent grant funds on DHCS awards made prior to FY 2020 your application will not be considered for funding. If your FY 2021 or FY 2022 award has unspent funds of 50 percent or more than what your approved work plan and budget projected at the time your FY 2023 application is evaluated, your application may not be considered for funding. The Agency will verify the performance status of FY 2021 and FY 2022 awards and make a determination after the FY 20223 application period closes.

(g) *Completeness Eligibility.* Your application must provide all the information requested in section D.2. of this notice. Applications lacking sufficient information to determine eligibility and scoring will be deemed ineligible and will not be considered for scoring.

(h) *Indirect Costs.* Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. Address To Request Application Package

The application guide and necessary forms are available at *http://www.grants.gov.* Additionally, the application guide, general program information, and other application tools for this funding opportunity is located at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* Use of the application guide is strongly recommended to assist you with the application process. You may also contact your State Office for more information. Contact information for State Offices is located at *http://www.rd.usda.gov/contact-us/state-offices.*

2. Content and Form of Application Submission

You must submit your application electronically through *Grants.gov*. Your application must contain all required information. To apply, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept applications through mail, courier delivery, in-person delivery, email, or fax. Paper applications are not accepted.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the Assistance Listing Number for this program. When you enter the *Grants.gov* website, you will find information about applying electronically through the site, as well as the hours of operation. To use *Grants.gov*, you must already have a Unique Entity Identifier (UEI) number and you must also be registered and maintain registration in the System for Award Management (SAM) at *www.sam.gov.* The UEI is assigned by SAM and replaces the formerly known Dun & Bradstreet D–U–N–S Number. The UEI number must be associated with the correct tax identification number of the applicant. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

You must submit all application documents electronically through *Grants.gov*. Applications must include electronic signatures. Original signatures may be required if funds are awarded. After applying electronically through *Grants.gov*, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

Your application must also contain the following required forms and proposal elements:

(a) Form SF–424, ''Application for Federal Assistance.'' The application for Federal assistance must be completed by the lead entity as described in section C.1. of this notice. Your application must include your UEI and SAM Commercial code and expiration date (or evidence that you have begun the SAM registration process). If you do not include the expiration date and the UEI in your application, it will not be considered for funding. The form must be signed by an authorized representative.

(b) Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

(c) Form SF–424C, ''Budget Information—Construction Programs.'' This form must be completed, signed, and submitted as part of the application package for construction Projects.

(d) Executive Summary. A summary of the proposal, not to exceed one page, briefly describing the Project, tasks to be completed, and other relevant information that provides a general overview of the Project must be provided.

(e) Evidence of Eligibility. Evidence of the Consortium's eligibility to apply under this notice must be provided. This section must include a detailed summary demonstrating that the applicant is a Consortium as defined in paragraph A of this notice and explain how each Consortium member meets the definition of an eligible entity as defined under Definitions in this notice.

(f) Consortium Agreements. The application must include a formal written agreement with each Consortium member that addresses the negotiated arrangements for administering the Project to meet Project goals, the Consortium member's responsibilities to comply with administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies, and facilitate a smooth functioning collaborative venture. Under the agreement, each Consortium member must perform a substantive role in the Project and not merely serve as a conduit of funds to another party or parties. This agreement must be signed by an authorized representative of the lead entity and an authorized representative of each partnering consortium entity.

(g) Scoring Criteria. Each of the scoring criteria in this notice must be addressed in narrative form. Failure to address each scoring criterion will result in the application being determined ineligible.

(h) Performance Measures. The Agency has established annual performance measures to evaluate the DHCS program. Estimates on the following performance measures, as part of your application, must be provided:

(1) Number of businesses assisted;

(2) Number of jobs created;

(3) Number of jobs saved; and

(4) Number of individuals assisted/trained.

It is permissible to have a zero in a performance element. When calculating jobs created, estimates should be based upon actual jobs to be created by your organization as a result of the DHCS funding or actual jobs to be created by businesses as a result of assistance from your organization. When calculating jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive DHCS funding or actual jobs that would have been lost without assistance from your organization.

You can also suggest additional performance elements, for example where job creation or jobs saved may not be a relevant indicator. These additional elements should be specific, measurable performance elements that could be included in an award document.

(i) Financial Information and Sustainability. Current financial statements and a narrative description demonstrating sustainability of the Project, all of which show sufficient resources and expertise to undertake and complete the Project and how the Project will be sustained following completion must be provided. Applicants must provide three years of pro-forma financial statements for the Project.

(j) Evidence of Legal Authority and Existence. The lead entity must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and perform the activities proposed under the grant application.

(k) Service Area Maps. Maps with sufficient detail to show the area that will benefit from the proposed facilities and services and the location of the facilities improved or purchased with grant funds, if applicable, must be provided.

(l) Environmental information necessary to support the Agency's environmental finding. Required information can be found in 7 CFR part 1970, specifically in subpart B, and subpart C. These provisions may be found at *https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970* Construction related activities funded by RD must comply with State and local building codes and 7 CFR part 1924. Depending on the actions anticipated, an appropriate 7 CFR part 1970 compliant environmental document must be submitted and approved, prior to commencement of construction.

3. System for Award Management and Assigned Unique Entity Identifier

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR 25 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in their application, unless determined exempt under 2 CFR 25.110 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25/subpart-A/section-25.110*).

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Date and Time

Application Deadline Date: Completed applications must be submitted electronically to *www.grants.gov* by 11:59 p.m. Eastern Time July 3, 2023, to be eligible for funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. *Grants.gov* will not accept applications submitted after the deadline. All application documents identified in this notice are required in the submission to be considered a complete application.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application. See the application guide for a full discussion of each item comprising a complete application. For complete application requirements, refer to section D. 2. of this document.

5. Intergovernmental Review

Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and

local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/*

If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC, or if you do not want to submit a copy of the application, our State Offices will submit your application to the SPOC or other appropriate agency or agencies. Applications from Federally recognized Indian tribes are not subject to this requirement.

6. Funding Restrictions

Project funds may not be used for ineligible purposes. In addition, you may not use Project Funds for the following:

(a) To duplicate current services or to replace or to substitute support previously provided, however, Project Funds may be used to expand the level of effort or a service beyond what is currently being provided;

(b) To pay for costs to prepare the application for funding under this notice;

(c) To pay for costs of the Project incurred prior to the effective date of the period of performance;

(d) To pay expenses for applicant employee training not directly related to the Project;

(e) To fund political activities;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) To engage in any activities that are considered a Conflict of Interest, as defined by this notice; or

(i) To fund any activities prohibited by 2 CFR part 200.

In addition, your application will not be considered for funding if it does any of the following:

(1) Assists a hemp producer without a valid license issued by a State, Tribe or USDA, as applicable, or in accordance with 7 CFR part 990.

(2) Requests more than the maximum grant amount; or

(3) Proposes ineligible costs that equal more than 10 percent of the Project Funds.

The Agency will consider your application for funding if it includes ineligible costs of 10 percent or less of total Project Funds, if it is determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs before the Agency will make the grant award or the amount of the grant award will be reduced accordingly. If the Agency cannot determine the percentage of ineligible costs, your application will not be considered for funding.

7. Other Submission Requirements

To submit an application, you must follow the instruction for this funding opportunity at *http://www.grants.gov.* A password is not required to access the website. You should not submit your application in more than one format or in more than one submission. Applications will not be accepted if the text is less than 11-point font. Applicants having technical difficulties with submitting an application should contact *grants.gov* directly. Technical difficulties submitting an application through *Grants.gov*. will not be a reason to extend the application deadline.

E. Application Review Information

1. Evaluation Criteria

All eligible and complete applications will be evaluated based on the following criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual scoring criterion. DHCS is a competitive program, so you will receive scores based on the quality of your responses. Simply addressing the criteria will not guarantee higher scores. The total points possible for the criteria are 110. The minimum score requirement for funding is 60 points. It is at the Agency's discretion to fund applications with a score of 59 points or less if it is in the best interest of the Federal Government.

(a) *Community Needs and Benefits Derived from the Project (maximum of 30 points).* A panel of USDA employees will assess how the Project will benefit the residents in the Delta Region. This criterion will be scored based on the documentation in support of the community needs for health services and public health-related facilities and the benefits to people living in the Delta Region derived from the implementation of the proposed Project. It should lead clearly to the identification of the Project participant pool and the target population for the Project and provide convincing links between the Project and the benefits to the community to address its health needs. You must discuss the:

(i) Health care needs/issues/challenges facing the service area and explain how the identified needs/issues/challenges were determined. Discussion should also identify problems faced by the residents in the region.

(ii) Proposed assistance to be provided to the service area and how the Project will benefit the residents in the region.

(iii) Implementation plan for the Project and provide milestones which are well-defined and can be realistically completed.

(iv) Expected outcomes of the proposed Project and how they will be tracked and monitored. You should attempt to quantify benefits in terms of outcomes from the Project; that is, ways in which peoples' lives, or the community, will be improved. Provide estimates of the number of people affected by the benefits arising from the Project.

(b) *The Project Management and Organization Capability (maximum of 30 points).* A panel of USDA employees will evaluate the Consortium's experience, past performance, and accomplishments addressing health care issues to ensure effective Project implementation. This criterion will be scored based on the documentation of the Project's management and organizational capability. You must discuss:

(i) Your organization's management and fiscal structure including well-defined roles for administrators, staff, and established financial management systems.

(ii) Relevant qualifications, capabilities, and educational background of the identified key personnel (at a minimum, the Project Manager) who will manage and implement programs.

(iii) Your organization's current successful and effective experience (or demonstrated experience within the past five years) addressing the health care issues in the Delta Region.

(iv) Your organization's experience managing grant-funded programs.

(v) The extent to which administrative/management costs are balanced with funds designated for the provision of programs and services.

(vi) The extent and diversity of eligible entity types within the applicant's Consortium of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region.

(c) *Work Plan and Budget (maximum of 30 points).* You must provide a work plan and budget that includes the following: (1) the specific activities, such as programs, services, trainings, and/or construction-related activities for a facility to be performed under the Project; (2) the estimated line item costs associated with each activity, including grant funds and other necessary sources of funds; (3) the key personnel who will carry out each activity (including each Consortium member's role); and (4) the specific time frames for completion of each activity.

An eligible start and end date for the Project and for individual Project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. You must show the source and use of both grant and other contributions for all tasks. Other contributions must be spent at a rate equal to, or in advance of, grant funds.

A panel of USDA employees will evaluate your work plan for detailed actions and an accompanying timetable for implementing the proposal. Clear and comprehensive work plans detailing all project goals, tasks, timelines, costs, and responsible personnel in a logical and realistic manner will result in a higher score.

(d) *Local Support (maximum 10 points).* A panel of USDA employees will evaluate your application for local support of the proposed Project. The application must include documentation detailing support solicited from local government, public health care providers, and other entities in the Delta Region. Evidence of support can include, but is not limited to, surveys conducted amongst Delta Region residents and stakeholders, notes from focus groups, or letters of support from local entities.

(e) *Administrator Discretionary Points (maximum of 10 points).* The Administrator may choose to award up to 10 points to support geographic distribution of funds and/or key priorities as follows (more details available at *https://www.rd.usda.gov/priority-points*):

(1) Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure. Proposals where the project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score in the United States. Information on this priority may be found at: *https://www.rd.usda.gov/priority-points.*

(2) Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects. Direct technical assistance to a project located in or serving a community with a score 0.75 or above on the CDC Social Vulnerability Index. Information on this priority may be found at: *https://www.rd.usda.gov/priority-points.*

(3) Reduce climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities. Direct technical assistance to a project addressing climate impacts shown as either quantitative or qualitative. Additional information on this priority may be found at: *https://www.rd.usda.gov/priority-points.*

(i) *Quantitative:* Project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index.

(ii) *Qualitative:* Demonstrating how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

2. Review and Selection Process

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this notice, and other applicable Federal regulations. If determined eligible, the review panel will convene to reach a consensus on the scores for each of the eligible applications. The Administrator may choose to award up to 10 Administrator discretionary points based on criterion (e) in section E.1. of this notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is ranked and not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices

Successful applicants will receive notification for funding by electronic mail, containing instructions on requirements necessary to proceed with execution and performance of the award. Applicants must comply with the terms of the award, including meeting all applicable statutes and regulations before the grant award can be approved and funded.

If you are not selected for funding, you will be notified in writing by electronic mail and informed of any review and appeal rights. Funding of successfully appealed applications will be limited to available FY 2023 funding.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 2 CFR parts 25, 170, 180, 200, 400, 415, 417, 418, and 421; and 48 CFR 31.2, and successor regulations to these parts. All recipients of Federal financial assistance are required to report information about first tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)). These regulations may be obtained at *https://www.ecfr.gov/cgi-bin/ECFR?page=browse.*

The following additional requirements apply to grantees selected for this program:

(a) Execution of an Agency approved Financial Assistance Agreement.

(b) Acceptance of a written Letter of Conditions.

(c) Submission of Form RD 1940–1, ''Request for Obligation of Funds.''

(d) Submission of ''Certification for Contracts, Grants and Loans.''

(e) SF–LLL, ''Disclosure of Lobbying Activities'' if applicable.

3. Reporting

After grant approval and through grant completion, you will be required to provide the following:

(a) A SF–425, ''Federal Financial Report,'' and a project performance report will be required on a semiannual basis (due 30 working days after the end of the semiannual period). For the purposes of this grant, semiannual periods end on June 30th and December 31st. The project performance reports shall include a comparison of actual accomplishments to the objectives established for that period.

(b) Reasons why established objectives were not met, if applicable.

(c) Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation.

(d) Objectives and timetable established for the next reporting period.

(e) A final project and financial status report within 90 days after the expiration or termination of the grant.

(f) Outcome project performance reports and final deliverables.

G. Federal Awarding Agency Contact(s)

For general questions about this funding opportunity, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this notice. You may also contact Honie Turner, Program Management Division, Direct Programs Branch, Rural Business-Cooperative Service, USDA at (202) 720–1400 or email *CPgrants@usda.gov.* You are also encouraged to visit the application website for application tools, including an application template, at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

H. Other Information

Build America, Buy America Act

Funding to Non-Federal Entities. Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act, Public Law 117–58. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at *https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuy AmericaWaiver.*

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB must approve all ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' (44 U.S.C. 3502(3)(A)). The Agency has concluded that the reporting requirements contained in this rule/funding announcement will involve less than 10 persons and do not require approval under the provisions of the Act.

National Environmental Policy Act

All recipients under this notice are subject to the requirements of 7 CFR part 1970 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970*). The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This Executive Order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this notice does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, this notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Tribal Coordinator at *aian@usda.gov* or (720) 544–2911.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/part-25*), must be registered in SAM and have a UEI number as stated in section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/part-170*).

Civil Rights Act

All grants made under this notice are subject to title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A (Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

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

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; and

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or,

(3) *Email: OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–09260 Filed 5–1–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–23–ADMIN–0010]

Notice of Request for Approval of a New Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service, agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency to request approval for a new information collection in support of compliance with the grantee accepting the conditions of the award that the grantee intends to meet them within a reasonable time.

DATES: Comments on this notice must be received by July 3, 2023.

ADDRESSES: Comments may be submitted by the following method:

• *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 690–2682. Email *lynn.gilbert@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that Rural Development is submitting to OMB for a new collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RHS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RHS–23–ADMIN–0010 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: Common Forms Package for Letter of Intent to Meet Conditions.

OMB Number: 0575–New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The information collection under OMB Number 0575-New will enable the Agencies to effectively monitor a recipient's compliance with the conditions set forth in the loan and/or grant agreement.

The Secretary of Agriculture is authorized by 7 U.S.C. 1936(b) to make or guarantee loans to eligible entities (Indian tribes, public agencies, cooperatives and nonprofit corporations) so that loans will be provided to individuals and entities for the purposes that predominantly serve communities in rural areas and promote community development, establish new businesses, establish and support microlending programs and create or retain employment opportunities.

The Agencies are required to provide Federal financial assistance through its housing, community and business programs and for utility program implementation and with specific attention to water and environmental programs. The laws implemented in 7 CFR part 1942, require the recipients of RD Federal financial assistance to collect various types of information. Recipients of awards are required to submit reporting and payment request information to facilitate monitoring of the award and disbursement of funds.

Estimate of Burden: RD is requesting approval for one respondent and a one-hour place holder in order for OMB to issue a control number for these forms. The burden for each of the forms will be accounted for within the individual Rural Development program collection packages using the form(s).

Respondents: Recipients of Rural Development Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Responses per Respondent per Form in package:

Form No.	Responses per respondent
1942–6	1

Comments from interested parties are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–09199 Filed 5–1–23; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 3:00 p.m. MT on Thursday, May 18, 2023. The purpose of the meeting is to continue discussing potential projects of study.

DATES: Thursday, May 18, 2023, from 3:00 p.m.–4:30 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1610172241.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 017 2241.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Utah Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion: Project Proposal Submissions
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: April 26, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–09217 Filed 5–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for June 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in June 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Certain Activated Carbon from China, A–570–904 (3rd Review)	Mary Kolberg, (202) 482–1785.
Citric Acid and Certain Citrate Salts from Belgium, A–423–813 (1st Review)	Mary Kolberg, (202) 482–1785.
Citric Acid and Certain Citrate Salts from Columbia, A–301–803 (1st Review)	Mary Kolberg, (202) 482–1785.
Citric Acid and Certain Citrate Salts from Thailand, A–549–833 (1st Review)	Mary Kolberg, (202) 482–1785.
Certain Folding Gift Boxes from China, A–570–866 (4th Review)	Mary Kolberg, (202) 482–1785.
Certain Tin Mill Products from Japan, A–588–854 (4th Review)	Jacqueline Arrowsmith, (202) 482–5255.
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty orders is scheduled for initiation in June 2023..	
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in June 2023..	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: April 17, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–09222 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–914]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S Department of Commerce (Commerce) is conducting the administrative review of the antidumping duty order on light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China). The period of review (POR) is August 1, 2021, through July 31, 2022. Commerce preliminarily determines that Hangzhou Ailong Metal Product Co., Ltd. (Ailong) failed to establish its eligibility for a separate rate and, therefore, is part of the China-wide entity. We invite interested parties to comment on these preliminary results.

DATES: Applicable May 2, 2023.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4162.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on LWRPT from China [1] for the POR.[2] On August 31, 2022, Home Depot U.S.A., Inc. (THD), a U.S. importer of LWRPT from China, requested a review of Ailong, a producer and exporter of subject merchandise.[3] Subsequently, we initiated an administrative review of the *Order* with respect to Ailong.[4]

Scope of the Order

The merchandise subject to this *Order* is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this *Order* is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the *Order* is dispositive.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

China-Wide Entity

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative review.[5] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity. In this administrative review, no party requested a review of the China-wide entity and we have not self-initiated a review of the China-wide entity. Because we are not conducting a review of the China-wide entity, the China-wide entity's entries are not subject to the review, and the rate applicable to the China-wide entity is not subject to change as a result of this review. The weighted-average dumping margin previously determined for the China-wide entity is 255.07 percent.[6]

Preliminary Results of Review

The deadline for Ailong to submit a no-shipment certification, separate rate application (SRA), or separate rate certification (SRC) was November 10, 2022.[7] Ailong, the only company under review, did not submit an SRA or SRC. Thus, Commerce preliminarily determines that Ailong has not demonstrated its eligibility for a separate rate and, therefore, Ailong is part of the China-wide entity and subject to the China-wide rate of 255.07 percent.

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs or written comments, filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.[8] ACCESS is available to registered users at *https://access.trade.gov.* Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.[9] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a

[1] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 47187 (August 2, 2022).

[3] *See* Home Depot U.S.A., Inc.'s Letter, ''Request for Administrative Review,'' dated August 31, 2022.

[4] *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 61278 (October 11, 2022). (*Initiation Notice*).

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Non-Market Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[6] *See Order,* 73 FR 45403; *see also Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 77 FR 52683 (August 30, 2012).

[7] *See Initiation Notice,* 87 FR 61278 (''If a producer or exporter named in this notice of initiation had no exports, sales, or entries during {POR}, it must notify Commerce within 30 days of publication of this notice in the **Federal Register** . . . Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice.''). Thirty calendar days after the *Initiation Notice* published was November 10, 2022.

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

table of authorities.[10] Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.[11]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.[12] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for a hearing to be held.[13] Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP will assess, antidumping duties on all appropriate entries covered by this review.[14] We intend to instruct CBP to liquidate entries of subject merchandise exported by Ailong, if we continue to determine in the final results Ailong to be part of the China-wide entity, at the China-wide entity rate of 255.07 percent.[15]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) for Ailong, if it is found to not be eligible for a separate rate in the final results of review, then its cash deposit rate will be the rate applicable for the China-wide entity; (2) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 255.07 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: April 25, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–09224 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule,* 85 FR at 41363.

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 310(d).

[14] *See* 19 CFR 351.212(b)(1).

[15] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection

within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of May 2023,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceedings	
AUSTRIA: Carbon and Alloy Steel Cut-To-Length Plate, A–433–812	5/1/22–4/30/23
BELGIUM:	
Stainless Steel Plate in Coils, A–423–808	5/1/22–4/30/23
Carbon and Alloy Steel Cut-To-Length Plate, A–423–812	5/1/22–4/30/23
BRAZIL: Iron Construction Castings, A–351–503	5/1/22–4/30/23
CAMBODIA: Mattresses, A–555–001	5/1/22–4/30/23
CANADA:	
Large Diameter Welded Pipe, A–122–863	5/1/22–4/30/23
Polyethylene Terephthalate Resin, A–122–855	5/1/22–4/30/23
FRANCE: Carbon and Alloy Steel Cut-To-Length Plate, A–427–828	5/1/22–4/30/23
GERMANY: Carbon and Alloy Steel Cut-To-Length Plate, A–428–844	5/1/22–4/30/23
GREECE: Large Diameter Welded Pipe, A–484–803	5/1/22–4/30/23
INDIA:	
Certain Welded Carbon Steel Standard Pipes and Tubes, A–533–502	5/1/22–4/30/23
Organic Soybean Meal, A–533–901	11/2/21–4/30/23
Polyethylene Terephthalate Resin, A–533–861	5/1/22–4/30/23
Silicomanganese, A–533–823	5/1/22–4/30/23
INDONESIA:	
Mattresses, A–560–836	5/1/22–4/30/23
Polyethylene Retail Carrier Bags, A–560–822	5/1/22–4/30/23
ITALY:	
Carbon and Alloy Steel Cut-To-Length Plate, A–475–834	5/1/22–4/30/23
Carbon and Alloy Steel Wire Rod, A–475–836	5/1/22–4/30/23
JAPAN:	

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
Carbon and Alloy Steel Cut-To-Length Plate, A–588–875	5/1/22–4/30/23
Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products, A–588–869	5/1/22–4/30/23
Gray Portland Cement and Cement Clinker, A–588–815	5/1/22–4/30/23
KAZAKHSTAN: Silicomanganese, A–834–807	5/1/22–4/30/23
MALAYSIA: Mattresses, A–557–818	5/1/22–4/30/23
OMAN: Polyethylene Terephthalate Resin, A–523–810	5/1/22–4/30/23
REPUBLIC OF KOREA:	
Carbon and Alloy Steel Cut-To-Length Plate, A–580–887	5/1/22–4/30/23
Carbon and Alloy Steel Wire Rod, A–580–891	5/1/22–4/30/23
Ferrovanadium, A–580–886	5/1/22–4/30/23
Large Diameter Welded Pipe, A–580–897	5/1/22–4/30/23
Polyester Staple Fiber, A–580–839	5/1/22–4/30/23
SERBIA: Mattresses, A–801–002	5/1/22–4/30/23
SOCIALIST REPUBLIC OF VIETNAM:	
Polyethylene Retail Carrier Bags, A–552–806	5/1/22–4/30/23
Mattresses, A–552–827	5/1/22–4/30/23
SOUTH AFRICA: Stainless Steel Plate in Coils, A–791–805	5/1/22–4/30/23
SPAIN: Carbon and Alloy Steel Wire Rod, A–469–816	5/1/22–4/30/23
TAIWAN:	
Carbon and Alloy Steel Cut-To-Length Plate, A–583–858	5/1/22–4/30/23
Certain Circular Welded Carbon Steel Pipes and Tubes, A–583–008	5/1/22–4/30/23
Polyester Staple Fiber, A–583–833	5/1/22–4/30/23
Polyethylene Retail Carrier Bags, A–583–843	5/1/22–4/30/23
Stainless Steel Plate in Coils, A–583–830	5/1/22–4/30/23
Stilbenic Optical Brightening Agents, A–583–848	5/1/22–11/26/22
THAILAND: Mattresses, A–549–841	5/1/22–4/30/23
THE PEOPLE'S REPUBLIC OF CHINA:	
1-Hydroxyethylidene-1, 1-Diphoshonic Acid (HEDP), A–570–045	5/1/22–4/30/23
Aluminum Extrusions, A–570–967	5/1/22–4/30/23
Carton-Closing Staples, A–570–055	5/1/22–4/30/23
Cast Iron Soil Pipe, A–570–079	5/1/22–4/30/23
Certain Steel Wheels, A–570–082	5/1/22–4/30/23
Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, A–570–124	5/1/22–4/30/23
Circular Welded Carbon Quality Steel Line Pipe, A–570–935	5/1/22–4/30/23
Citric Acid and Citrate Salt, A–570–937	5/1/22–4/30/23
Iron Construction Castings, A–570–502	5/1/22–4/30/23
Non-refillable Steel Cylinders, A–570–126	5/1/22–4/30/23
Oil Country Tubular Goods, A–570–943	5/1/22–4/30/23
Polyethylene Terephthalate Resin, A–570–024	5/1/22–4/30/23
Pure Magnesium, A–570–832	5/1/22–4/30/23
Stilbenic Optical Brightening Agents, A–570–972	5/1/22–4/30/23
Walk-Behind Snow Throwers and Parts Thereof, A–570–141	11/5/21–4/30/23
TURKEY:	
Carbon and Alloy Steel Wire Rod, A–489–831	5/1/22–4/30/23
Circular Welded Carbon Steel Pipes and Tubes, A–489–501	5/1/22–4/30/23
Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe, A–489–833	5/1/22–4/30/23
Light-Walled Rectangular Pipe and Tube, A–489–815	5/1/22–4/30/23
Mattresses, A–489–841	5/1/22–4/30/23
UNITED ARAB EMIRATES: Certain Steel Nails, A–520–804	5/1/22–4/30/23
THE UNITED KINGDOM: Carbon and Alloy Steel Wire Rod, A–412–826	5/1/22–4/30/23
VENEZUELA: Silicomanganese, A–307–820	5/1/22–4/30/23
Countervailing Duty Proceedings	
BRAZIL: Heavy Iron Construction Castings, C–351–504	1/1/22–12/31/22
INDIA:	
Organic Soybean Meal, C–533–902	9/3/21–12/31/22
Polyethylene Terephthalate Resin, C–533–862	1/1/22–12/31/22
ITALY: Carbon and Alloy Steel Wire Rod, C–475–837	1/1/22–12/31/22
REPUBLIC OF KOREA:	
Carbon and Alloy Steel Cut-To-Length Plate, C–580–888	1/1/22–12/31/22
Large Diameter Welded Pipe, C–580–898	1/1/22–12/31/22
SOCIALIST REPUBLIC OF VIETNAM: Polyethylene Retail Carrier Bags, C–552–805	1/1/22–12/31/22
SOUTH AFRICA: Stainless Steel Plate in Coils, C–791–806	1/1/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA:	
1-Hydroxyethylidene-1, 1-Diphoshonic Acid (HEDP), C–570–046	1/1/22–12/31/22
Aluminum Extrusions, C–570–968	1/1/22–12/31/22
Cast Iron Soil Pipe, C–570–080	1/1/22–12/31/22
Mattresses, C–570–128	1/1/22–12/31/22
Certain Chassis and Subassemblies Thereof, C–570–136	1/1/22–12/31/22
Certain Steel Wheels, C–570–083	1/1/22–12/31/22
Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, C–570–125	1/1/22–12/31/22
Citric Acid and Citrate Salt, C–570–938	1/1/22–12/31/22
Non-refillable Steel Cylinders, C–570–127	1/1/22–12/31/22
Polyethylene Terephthalate Resin, C–570–025	1/1/22–12/31/22

	Period
Walk-Behind Snow Throwers and Parts Thereof, C–570–142 9/10/21–12/31/22.	
TURKEY:	
Carbon and Alloy Steel Wire Rod, C–489–832	1/1/22–12/31/22
Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe, C–489–834	1/1/22–12/31/22

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of May 2023. If Commerce does not receive, by the last day of May 2023, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

Federal Register.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule*,[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 25, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–09223 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: Based upon the timely withdrawal of all review requests, the U.S. Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review and the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable May 2, 2023.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the periods of review and the AD and CVD orders listed in the table below, pursuant to 19 CFR

351.221(c)(1)(i).[1] All requests for these reviews have been timely withdrawn.[2]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the periods noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

	Period of review
AD Proceedings	
India:	
Oil Country Tubular Goods, A–533–857	9/1/2021–8/31/2022
Utility Scale Wind Tower, A–533–897	5/24/2021–11/30/2022
Oman:	
Certain Aluminum Foil, A–523–815	5/4/2021–10/31/2022
The Republic of Armenia:	
Certain Aluminum Foil, A–831–804	5/4/2021–10/31/2022
Russia:	
Certain Aluminum Foil, A–821–828	5/4/2021–10/31/2022
The Netherlands:	
Certain Hot-Rolled Steel Flat Products, A–421–813	10/1/2021–9/30/2022
The People's Republic of China:	
Diamond Sawblades and Parts Thereof, A–570–900	11/1/2021–10/31/2022
Melamine, A–570–020	12/1/2021–11/30/2022
Polyethylene Terephthalate Film, Sheet, and Strip, A–570–924	11/1/2021–10/31/2022
Potassium Permanganate, A–570–001	1/1/2022–12/31/2022
CVD Proceedings	
India:	
Welded Stainless Pressure Pipe, C–533–868	1/1/2021–12/31/2021
Utility Scale Wind Towers, C–533–898	3/25/2021–12/31/2021
Oman:	
Certain Aluminum Foil, C–523–816	3/5/2021–12/31/2021
The People's Republic of China:	
Forged Steel Fittings, C–570–068	1/1/2021–12/31/2021
High Pressure Steel Cylinders, C–570–978	[3] 1/1/2021–12/31/2021
Melamine, C–570–021	1/1/2021–12/31/2021
Mobile Access Equipment and Subassemblies Thereof, C–570–140	12/9/2021–12/31/2021
Steel Propane Cylinders, C–570–087	[4] 1/1/2021–12/31/2021

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the periods of review noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this recission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this recission notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 74404 (December 5, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 50 (January 3, 2023); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 7060 (February 2, 2023); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 15642 (March 14, 2023).

[2] The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

[3] This segment was listed in the previous quarterly rescission notice with an incorrect period of review (POR). The POR is listed correctly in this notice. *See Rescission of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 6233, 6234 (January 31, 2023).

[4] This segment was listed in the previous quarterly rescission notice with an incorrect POR. The POR is listed correctly in this notice. *Id.,* 88 FR at 6234.

continues to govern business proprietary information in these segments of these proceedings. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 26, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–09225 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC969]

Marine Mammals; File No. 26939

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS' Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543 (Responsible Party: Jon Hare, Ph.D.), has applied in due form for a permit to conduct research on pinnipeds.

DATES: Written, telefaxed, or email comments must be received on or before June 1, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26939 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26939 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Shasta McClenahan, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a 5-year permit to conduct pinniped stock assessment research, including estimation of distribution and abundance, determination of stock structure, habitat requirements, foraging ecology, health assessment, and effects of natural and anthropogenic factors. Research will primarily be on harbor seals (*Phoca vitulina*) and gray seals (*Halichoerus grypus*), and secondarily on harp seals (*Pagophilus groenlandicus*) and hooded seals (*Cystophora cristata*). The study area includes waters within or proximal to the U.S. and international waters from North Carolina north to Maine, and Canadian waters in the Gulf of Maine. Pinnipeds may be harassed during vessel and aircraft (manned and unmanned) transect and photo-identification surveys, and scat collection. Annually, up to 100 harbor seals, 350 gray seals, 5 harp seals, and 5 hooded seals will be captured, sampled, and released for measurement of body condition, biological sampling (*e.g.,* blood, blubber, skin, hair, swab samples, vibrissae), and attachment of telemetry devices. An additional 8,180 harbor seals and 15,765 gray seals may be unintentionally harassed annually during research. The applicant requests unintentional mortality during captures of up to 5 gray, 5 harbor, 1 harp, and 1 hooded seals annually. The applicant also requests to import and export samples for analysis. See application for detailed numbers by species, age-class, and procedure. The permit would be valid for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 26, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–09235 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC960]

Endangered and Threatened Species; Notice of Initiation of a 5-Year Review for the Taiwanese Humpback Dolphin

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

ACTION: Notice of initiation; request for information.

SUMMARY: NMFS announces the initiation of a 5-year review for the Taiwanese humpback dolphin (*Sousa chinensis taiwanensis*). NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that the listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on the Taiwanese humpback dolphin, particularly information on the status, threats, and recovery of the species that has become available since it was listed in 2018.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than July 3, 2023.

ADDRESSES: You may submit information on this document, identified by NOAA–NMFS–2023–0064, by the following method:

- *Electronic Submission:* Submit electronic information via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0064 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Information sent by any other method, to any other address or individual, or received after the end of the specified period, may not be considered by NMFS. All information received is 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 or protected information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous submissions (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Heather Austin at (301) 427–8422 or *Heather.Austin@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our review of the Taiwanese humpback dolphin (*Sousa chinensis taiwanensis*) listed as endangered under the ESA. Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. This will be the first review of this species since it was listed in 2018 under the ESA. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews under section 4(c)(2)(B), we determine whether any species should be removed from the list (*i.e.,* delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available: (1) the species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; and/or (3) the listed entity does not meet the statutory definition of a species. Any change in Federal classification would require a separate rulemaking process.

Background information on the species is available on the NMFS website at: *https://www.fisheries.noaa.gov/species/taiwanese-humpback-dolphin.*

Public Solicitation of New Information

To ensure that the review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of *Sousa chinensis taiwanensis.* Categories of requested information include: (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats to the species and its habitats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the review, you may submit your information and materials electronically (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 27, 2023.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–09241 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC897]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction Activities Associated With the Murray St. Bridge Seismic Retrofit Project in Santa Cruz, California

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

ACTION: Notice; issuance of incidental harassment authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive incidental harassment authorizations (IHAs) to the City of Santa Cruz to incidentally harass marine mammals during construction activities associated with the seismic retrofit of the Murray St. Bridge in Santa Cruz, California.

DATES: These authorizations are effective from May 1, 2023 through April 30, 2024 and May 1, 2024 through April 30, 2025.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On April 19, 2022, NMFS received a request from the City of Santa Cruz (the City) for two consecutive 1-year IHAs to take marine mammals incidental to construction activities associated with the Murray St. Bridge seismic retrofit project in Santa Cruz, CA. Following NMFS' review of the application, the City submitted revised versions on August 25, 2022, October 25, 2022, and December 13, 2022, and a final revised version on January 12, 2023. The application was deemed adequate and complete on January 24, 2023. The

City's request is for take of small numbers of California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina richardii*) by Level B harassment and take of small numbers of harbor seals by Level A harassment. Neither the City nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Activity

Overview

The City plans to conduct a seismic retrofit on the Murray St. Bridge, which spans the Santa Cruz Small Craft Harbor. As part of the project, the City will use vibratory pile extraction to temporarily remove docks and associated piles to accommodate construction access to the bridge. Impact pile driving will be used to install additional bridge support piles. In order to facilitate installation of bridge piles, vibratory extraction may be used to construct a temporary trestle. As an alternative to the trestle, a temporary barge may be constructed instead. The purpose of the project is to provide the bridge with additional vertical support and resistance to lateral seismic forces by installing additional pilings and structural support elements.

The City's activity includes impact and vibratory pile driving and vibratory pile removal, which may result in the incidental take of marine mammals by Level A and Level B harassment. The Murray St. Bridge project area includes waters within the Santa Cruz Small Craft Harbor and adjacent lands managed by the Santa Cruz Port District. Construction activities will span the course of 2 years, with the first year beginning on July 1, 2023 and lasting through July 31, 2023. The second year of construction activities will begin on July 1, 2024 and last through September 15, 2024. The City has requested an IHA for each of the 2 project years. However, given the City has applied for authorization for both project years concurrently and projects use similar activities, NMFS is issuing this single **Federal Register** notice announce the issuance of the two similar, but separate, IHAs.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHAs (88 FR 12316, February 27, 2023). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to the **Federal Register** notice for the description of the specific activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue two consecutive IHAs to the City was published in the **Federal Register** on February 27, 2023 (88 FR 12316). That notice described, in detail, the City's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorizations, and any other aspect of the notice of proposed IHAs, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period. During the 30-day public comment period, NMFS received no public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Pacific SARs. All values presented in Table 1 are the most recent available at the time of publication, including from the draft 2022 SARs, and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—MARINE MAMMAL SPECIES [4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A,233,515, 2014).	14,011	>320
Family Phocidae (earless seals)						

TABLE 1—MARINE MAMMAL SPECIES [4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Harbor seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*; Committee on Taxonomy (2022)).

As indicated above, the two species (with two managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While bottlenose dolphins (*Tursiops truncatus*) and harbor porpoises (*Phocoena phocoena*) have been reported in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Bottlenose dolphins and harbor porpoises may transit nearshore areas just outside the mouth of the Harbor (Carretta *et al.,* 2022). However, these species were not detected during any surveys of the Harbor area and are expected to remain outside the Harbor and beyond the project area.

In addition, the southern sea otter (*Enhydra lutris nereis*) may be found in the Harbor. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

A detailed description of the species likely to be affected by the construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice of the proposed IHAs (88 FR 12316, February 27, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges,

please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the City's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of the proposed IHAs (88 FR 12316, February 27, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the City's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of the proposed IHAs (88 FR 12316, February 27, 2023).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through these IHAs, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as use of the acoustic source (*i.e.,* impact pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for phocids because predicted auditory injury zones are larger than for otariids. Auditory injury is unlikely to occur for otariids. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The City's planned construction activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The City's planned activity includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,\ LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,\ LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,\ MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-pk,flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, the City used acoustic monitoring data from various similar locations to develop source levels for the different pile types, sizes, and methods planned for use (Table 4).

TABLE 4—SOURCE LEVELS FOR PLANNED REMOVAL AND INSTALLATION ACTIVITIES

Activity	Location	Pile size/type	Method	Peak sound pressure (dB re 1 μPa)	Mean maximum RMS SPL (dB re 1 μPa)	SEL [1] (dB re 1 μPa2 sec)	Source
Removal of existing bridge piles. Removal of dock FF&T piles.	Bridge Bent 6. Dock FF & BY	14″ P/C concrete	Vibratory	171	163	155	NAVFAC SW, 2022.
Install new permanent bridge piles.	Bridge Bents 4 through 8	30″ steel in CISS	Impact	210	190	177	Caltrans, 2015.
Install new permanent bridge piles.	Bridge Bents 4 through 8	30″ steel in CISS	Vibratory	196	159	175	Caltrans, 2020.
Install new permanent bridge piles.	Dock FF&T piles	14″ P/C concrete	Impact	185	170	160	Caltrans, 2020.
Install new permanent bridge piles.	Dock FF&T piles	14″ P/C concrete	Vibratory	171	163	155	NAVFAC SW, 2022.
Install temporary trestle piles	Adjacent to bridge	20″ steel [2]	Vibratory	194	154	NA	Caltrans, 2015.

[1] Sound exposure level (SEL).
[2] 24″ steel pipe used as a proxy for 20″ steel pile for vibratory pile driving.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2)$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the City's activities. The City assumed an open water attenuation rate of 4.5 dB per doubling of distance. The Level B harassment zones and ensonified area for the City's activities are shown in Table 5.

TABLE 5—DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Pile type/size	Method	Projected radial distance to Level B harassment threshold (m)
Year 1		
14″ P/C concrete	Vibratory	7,356
Year 2		
30″ steel pipe pile in CISS	Impact	1,000
	Vibratory	3,981
14″ p/c concrete	Impact	46
	Vibratory	7,356
20″ steel pipe piles	Vibratory	1,848

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs in the User Spreadsheet tool (*i.e.,* number of piles per day, duration, and/or strikes per pile) are presented in Table 1 of the **Federal Register** notice announcing the proposed IHAs (88 FR 12316, February 27, 2023). The maximum RMS SPL/SEL SPL for each pile type are presented in Table 4. Resulting Level A harassment isopleths are reported below in Table 6.

TABLE 6—DISTANCES TO LEVEL A HARASSMENT THRESHOLDS

Pile type/size	Method	Projected distances to Level A harassment threshold (m)	
		Phocids	Otariids
Year 1			
14″ P/C concrete	Vibratory	22.6	1.6
Year 2			
30″ steel pipe pile in CISS	Impact	300	22
	Vibratory	12.3	1
14″ p/c concrete	Impact	13	1
	Vibratory	22.6	1.6
20″ steel pipe piles	Vibratory	5.7	0.4

Marine Mammal Occurrence

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. Unless otherwise specified, the term ''pile driving'' in this section, and all following sections, may refer to either pile installation or removal. NMFS has carefully reviewed the City's analysis and concludes that it represents an appropriate and accurate method for estimating incidental take that may be caused by the City's activities.

Daily occurrence estimates of marine mammals in the project area are based upon marine mammal surveys conducted in the vicinity of the Murray St. Bridge by EcoSystems West Consulting Group. Survey sessions were conducted in December 2006, September 2009 through October 2009. Of these monitoring years, the maximum counts of California sea lions and harbor seals were observed in 2009 (Table 7). As the 2009 surveys occurred during the fall season and the project will occur during the summer and fall seasons, the 2009 data are likely representative of maximum occurrences that could be expected in the project area.

TABLE 7—MAXIMUM COUNTS OF SPECIES LIKELY IMPACTED BY PLANNED ACTIVITIES

Species	2006 Monitoring	2009 Monitoring
California sea lion	1	15
Harbor seal	6	11

Take Estimation

Here, we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized.

Maximum occurrence estimates (reported in Table 7) were multiplied by the number of days of pile removal and installation (14 days in Year 1; 98 days in Year 2) to calculate estimated take by Level B harassment of California sea lions and harbor seals (Table 8). The City assumed a maximum of two harbor seals will be present in the project area that may be impacted during the 37 days of impact pile driving. The expected occurrence of two harbor seals was multiplied by the number of impact pile driving days (37) to estimate take by Level A harassment of harbor seals. Given the very small Level A harassment isopleths for California sea lions and mitigation measures, Level A harassment of California sea lions is not expected nor authorized. By using the sighting-based approach, take values are not affected by the estimated harassment distances from Tables 6 and 7. NMFS has carefully reviewed these methods and agrees with this approach.

TABLE 8—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK AUTHORIZED FOR TAKE

Species	Maximum number of animals expected to occur/day	Maximum total days of in-water work [1]	Authorized take by Level A harassment	Authorized take by Level B harassment	Total authorized take	Percent of stock authorized for take
Year 1						
Harbor Seal	11	14	0	154	154	0.49
California Sea Lion	15	14	0	210	210	0.082
Year 2						
Harbor Seal	11	98	[2] 74	1,078	1,152	3.72
California Sea Lion	15	98	0	1,470	1,470	0.57

[1] Includes potential temporary trestle installation/removal.
[2] Assumes a maximum of 2 harbor seals sighted per day that may be impacted and 37 days of impact pile driving.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Shutdown Zones

Prior to commencement of in-water construction activities, the City will establish shutdown zones for all activities. The purpose of a shutdown zone is to define an area within which shutdown of the activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). During all in-water construction activities, the City will implement a standard minimum 10 m (32.8 ft) shutdown zone. If a marine mammal enters the shutdown zone, in-water activities must be stopped until visual confirmation that the animal has left the zone of the animal is not sighted for 15 minutes.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and the animal's presence within the estimated harassment zone must be documented. Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

TABLE 9—SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES

Pile size, type, and method	Minimum shutdown zone (m)		Level B harassment zone (m)
	Phocid	Otariid	
Year 1			
14″ p/c concrete vibratory removal	10	10	7,356
Year 2			
14″ p/c concrete vibratory install/removal	10	10	7,356
14″ p/c concrete impact install			46
30″ steel pile in CISS impact install			1,000
30″ steel pile in CISS vibratory install			3,981
20″ steel pile vibratory install			1,848

Protected Species Observers

The placement of protected species observers (PSOs) during all pile driving activities (described in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*i.e.,* fog, heavy rain), pile driving will be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown zone and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 9, pile driving activity will be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Pre-construction monitoring will also take place over the course of at least 5 days before commencing in-water construction activities. The purpose of this monitoring effort will be to update occurrence information on marine mammals in the project area. Specifically, this monitoring will cover a period of at least 1 week for 4 hours each day.

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the City's mitigation measures, NMFS has determined that these mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving activities will be conducted by PSOs meeting the following NMFS requirements:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods will be used;
- At least one PSO will have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

• Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction.

PSOs will have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The City will have at least one PSO stationed at the best possible vantage points in the project area to monitor during all pile driving activities. If a PSO sights a marine mammal in the shutdown zone, the PSO should notify the equipment operator to shut down. The PSO will let the contractor know when activities can re-commence. Additional PSOs may be employed during periods of low or obstructed visibility to ensure the entirety of the shutdown zones are monitored. A marine mammal monitoring plan will be developed and submitted to NMFS for approval prior to commencing in-water construction activities.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving activities for each IHA, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal monitoring report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO datasheets. Specifically, the report will include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) or number of strikes for each pile (impact driving);

• PSO locations during marine mammal monitoring; and

• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Specifically, PSOs will record the following:

• Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;

• Time of sighting;

• Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

• Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;

• Estimated number of animals (min/max/best estimate);

• Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

• Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, or flushing);

• Number of marine mammals detected within the harassment zones, by species; and

• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS' comments will be required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data will be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the City will report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov*) and to the West Coast regional stranding network (866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the City must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The City will not resume their activities until notified by NMFS.

The report will include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any

impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to California sea lions and harbor seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between these species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile installation and removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment and, for harbor seals, Level A harassment, from underwater sounds generated from impact pile installation and vibratory pile installation and removal activities. Potential takes could occur if individuals move into the ensonified zones when these activities are underway.

No serious injury or mortality will be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for California sea lions due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for this species. The potential for harassment will be minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Take by Level A harassment is authorized for harbor seals during Year 2 as the Level A harassment zone for impact pile driving exceeds the size of the shutdown zone for this activity. Therefore, there is the possibility that an animal could enter a Level A harassment zone without being detected, and remain within that zone for a duration long enough to incur PTS. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving, such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take by Level A harassment authorized for these species is very low. For California sea lions, NMFS anticipates and has authorized no Level A harassment take over the duration of the City's planned activities; for harbor seals, NMFS has authorized no take by Level A harassment in Year 1 and no more than 74 takes by Level A harassment in Year 2. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

The takes from Level B harassment will be due to potential behavioral disturbance. On the basis of reports in the literature as well as monitoring from other similar activities, effects will likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; NAVFAC SW, 2018). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. Marine mammals could also experience TTS if they move into the Level B monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Thus, it is not considered an injury. While TTS could occur, it is not considered a likely outcome of this activity. We expect that any avoidance of the project areas by marine mammals will be temporary in nature and that any marine mammals that avoid the project areas during construction will not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that will affect the rates of recruitment or survival of any affected stock. The potential for harassment is minimized through construction methods and the implementation of planned mitigation strategies (see Mitigation section).

Anticipated and authorized takes are expected to be limited to short-term Level A (potential PTS) and Level B harassment (behavioral disturbance) as construction activities will occur over the course of 14 days in Year 1 and 98 days in Year 2. Take will also occur within a limited, confined area of each stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

No marine mammal stocks for which incidental take is authorized are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal occurrences in the area, small shutdown zones, and monitoring make injury takes of marine mammals unlikely. The shutdown zones will be thoroughly monitored before the pile installation or removal begins, and construction activities will be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals will be detected by trained observers under environmental conditions described for the project. Therefore, the mitigation and monitoring measures are expected to reduce the amount and intensity for Level A and Level B behavioral harassment. Furthermore, the pile installation and removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations, which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

The project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated critical habitat within the project area, and activities will not permanently modify existing marine mammal habitat. The activities may

cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range, however, due to the short duration of activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment of California sea lions is authorized;
- The small Level A harassment takes of harbor seals authorized are expected to be of a small degree;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment will primarily be in the form of behavioral disturbance, resulting in avoidance of the project areas around where pile driving or removal activities are occurring;
- Biologically important areas or critical habitat have not been identified within the project area;
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- Effects on marine mammal prey species are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations; and
- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The instances of take NMFS has authorized is below one-third of the estimated stock abundance for all impacted stocks (Table 8). (In fact, take of individuals is less than 4 percent of the abundance for all affected stocks.) The number of takes authorized are small relative to the relevant stocks or populations, even if each estimated take occurred to a new individual. Furthermore, these takes are likely to only occur within a small portion of the each stock's range and the likelihood that each take will occur to a new individual is low.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued two consecutive IHAs to the City for the potential harassment of small numbers of harbor seals and California sea lions incidental to the seismic retrofit of the Murray St. Bridge project in Santa Cruz, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: April 26, 2023.

Kimberly Damon-Randall

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–09193 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC748]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction of the Maryland Offshore Wind Project Offshore of Maryland

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from US Wind, Inc. (US Wind) for authorization to take small numbers of marine mammals incidental to the development of the Maryland Offshore Wind Project (Project) in the Bureau of Ocean Energy Management (BOEM) Commercial Lease on the Outer Continental Shelf OCS–A 0490 off of Maryland over the course of 5 years beginning on January 1, 2025. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of US Wind's request for regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on US Wind's application and request.

DATES: Comments and information must be received no later than June 1, 2023.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.taylor@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of US Wind's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On August 31, 2022, NMFS received an application from US Wind requesting authorization to take marine mammals incidental to the development of the Project in the BOEM Lease Area OCS–A–0490 off of Maryland. In response to our comments, and following an extensive information exchange with NMFS, US Wind submitted a final revised application on March 31, 2023, which we deemed adequate and complete on April 3, 2023. US Wind requests the regulations and subsequent Letter of Authorization (LOA) be valid for 5 years, beginning on January 1, 2025.

US Wind plans to construct the Project in three phases. Maryland Wind (phase 1; MarWin) is scheduled to be constructed in 2025; Momentum Wind (phase 2) is scheduled to be constructed in 2026; and Future Development (phase 3) is scheduled to be constructed in 2027. Each phase would include impact installation of wind turbine generators (WTG) and offshore substation (OSS) foundations, and inter-array and export cable trenching, laying, and burial. In addition, a single meteorological (met) tower would be installed during Momentum Wind construction. Site characterization surveys would be conducted only during the Momentum Wind and Future Development phases. Vessels would be used to transport crew, supplies, and materials to the project area to support construction. US Wind has determined that a subset of these activities (*i.e.,* installing piles using impact pile driving and site characterization surveys) may result in the take, by Level A harassment and Level B harassment, of marine mammals. Therefore, US Wind requests authorization to incidentally take marine mammals.

Specified Activities

Through a competitive leasing process under 30 CFR 585.211, US Wind was awarded Commercial Lease OCS–A 0490, offshore of Maryland, and the exclusive rights to submit a construction and operations plan (COP) for activities within the lease area. US Wind has submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the Project, which is a commercial-scale offshore wind energy facilities within a Lease Area covering approximately 80,000 acres (323.75 square kilometers (km^2)) and located approximately 18.5 km off the

coast of Maryland. The Project would consist of a total capacity of up to two gigawatts (GW) and US Wind has secured power purchase agreements (PPAs) with the state of Maryland for 1,108 megawatts (MW). The Project would include MarWin, a wind farm of approximately 300 MW, Momentum Wind, consisting of approximately 808 MW, and future development in the remainder of the lease area. The Project would consist of up to 114 wind turbine generators, 4 OSSs, 1 met tower, 2 transmission cables to shore making landfall in Delaware, and up to 4 export cables.

US Wind anticipates the following activities may potentially result in the harassment of marine mammals during the effective period of the requested regulations and associated LOA:

- Installing up to 114 WTG monopile foundations with a maximum diameter of 11 meters (m) using a 4,400 kJ impact hammer;
- Installing up to four OSSs foundation using 11–m monopiles driven with a 4,400 kJ impact hammer or jacket foundation comprised of 3–m pin piles driven with a 1,500 kJ impact hammer, or suction bucket foundations;
- Installing one permanent met tower supported by three 1.8–m pin piles using a 500 kJ impact hammer; and
- Using HRG equipment to survey the Lease Area over 28 days.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning US Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by US Wind, if appropriate.

Dated: April 26, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–09194 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC662]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Port of Nome Modification Project in Nome, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers (USACE) for authorization to take marine mammals incidental to the Port of Nome Modification Project in Nome, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than June 1, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Davis@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an

IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On October 31, 2022, NMFS received a request from USACE for an IHA to take marine mammals incidental to construction activities in Nome, Alaska. Following NMFS' review of the application, USACE submitted a revised version on February 21, 2023 and a final version on February 23, 2023 that clarified a few minor errors. The application was deemed adequate and complete on March 30, 2023. USACE's request is for take of 10 species of marine mammals by Level B harassment only. Neither USACE nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover 1 year of a larger project for which USACE intends to request take authorization for subsequent facets of the project. The larger 7-year project involves expansion of the Port of Nome.

Description of Proposed Activity

Overview

USACE is planning to modify the Port of Nome in Nome, Alaska to increase capacity and alleviate congestion at existing port facilities. Vibratory and impact pile driving would introduce underwater sounds that may result in take, by Level B harassment, of marine mammals. This proposed IHA would authorize take for Year 1 of Phase 1 of the project, which is scheduled to begin in May 2024. Work would occur during daylight hours and approximately 12 hours per day during the open water season.

Dates and Duration

The proposed IHA would be effective from May 1, 2024 to April 30, 2025. Work would occur during the open water season, roughly May through October. In-water construction activities would only occur during daylight hours, and typically over a 12-hour workday. However, when needed and due to the long summer day length at Nome's latitude, 24-hour, multi-shift operations may occur. For calculations herein, USACE conservatively assumed that 24 hours of work could occur in a given day (*e.g.,* in estimating the number of piles for installation on a given day). Pile driving is expected to occur over 85 in-water work days.

Specific Geographic Region

The Port of Nome Modification Project is located in Norton Sound, just offshore of Nome, Alaska. All construction activities would occur within approximately 3,600 feet (ft; 1,097 m) of the shoreline. The seabed in this area is flat and featureless, with bottom sediments consisting of sand and silt, with scattered cobbles and boulders. The nearshore waters are shallow and deepen very gradually, reaching a depth of 60 ft (18 m) at roughly 2 nautical miles (nmi; 3.7 km) offshore. In the Nome area, sea ice formation typically occurs in early November each year with spring break-up usually occurring in late May.

Figure 1—Project Location

Detailed Description of the Specified Activity

The City of Nome and USACE are proposing to expand the Port of Nome to provide much-needed additional capacity to serve the Arctic as well as to alleviate congestion at the existing port facilities. As noted above, this proposed IHA would authorize take associated with Year 1 of Phase 1 of the project only. Please refer to USACE's application for additional information about project components planned for the period beyond Year 1.

The USACE estimates that Year 1 activities would include mobilization, removal of the breakwater spur, development of the quarry for rock and gravel (*i.e.,* fill), dredging of the causeway footprint to accommodate for armor stone installation, pile driving for the OPEN CELL SHEET PILE™ (OCSP) dock, and placement of gravel fill inside new sheet pile cells. Additionally, USACE anticipates approximately 20 round trip vessel trips (*i.e.,* barge, support tugs, fuel, *etc.*) to occur between Nome and Anchorage during Year 1. With the exception of pile driving, these activities are not anticipated to result in take. Mobilization activities would occur on land, as would development of the quarry for rock and gravel (likely to occur at Cape Nome quarry). While marine mammals may behaviorally respond in some small degree to the noise generated by dredging operations, given the slow, predictable movements of these vessels, and absent any other contextual features that would cause enhanced concern, NMFS does not expect USACE's planned dredging to result in the take of marine mammals. (Though, as noted below, USACE has conservatively proposed to implement a 300 m shutdown zone for dredging.)

Gravel fill deposition would produce a continuous sound of a relatively short duration, does not require seafloor penetration, and would not affect habitat for marine mammals and their prey beyond that already affected by installation of the OCSP, discussed below. Further, placement of gravel fill would occur in a dry area behind the sheet piles, and placement would occur in a controlled manner so as not to compromise the newly installed piles. Gravel deposition is not expected to result in marine mammal harassment and it is not discussed further.

Because vessels will be in transit, exposure to ship noise will be temporary, relatively brief and will occur in a predictable manner, and also the sounds are of relatively lower levels. Elevated background noise from multiple vessels and other sources can interfere with the detection or interpretation of acoustic cues, but the brief exposures to one or two USACE vessels at a time would be unlikely to disrupt behavioral patterns in a manner that would qualify as take.

The OCSP dock would consist of approximately 66 cells when complete. Cells are constructed utilizing flat-web sheet piles, connector x-wyes (fabricated from three one-half-width sheet pile sections), and anchor piles. After all the piles for a cell have been installed, clean gravel fill would be placed within the cell. This process would continue sequentially until all the sheet pile cells are installed and backfilled. The cells are typically constructed one at a time. The contractor may use two sets of templates to allow for completing the pile driving of one cell and starting on the next while removing and reinstalling the template from the completed cell. However, only one hammer would be used at a time.

Table 1 lists the number of each pile size and type that USACE anticipates installing and/or removing during Year 1. USACE anticipates driving piles with a vibratory hammer; however, it may use an impact hammer if hard driving conditions are encountered and use of the vibratory hammer is unsuccessful.

TABLE 1—NUMBER AND TYPE OF PILES PLANNED FOR INSTALLATION OR REMOVAL

Pile type	Installation/removal	Number of piles
Temporary template piles (Pipe piles ≤24″)	Installation and Removal	[a] 228
(Alternate) Temporary template piles (H-piles 14″) [a b]	Installation and Removal	228
Anchor piles6 (14″ HP14x89 or similar)	Installation	27
Sheet piles (20″ PS31 or similar)	Installation	1,600
Fender piles (Pipe piles 36″)	Installation	21

[a] Each of the 228 piles would be both installed and removed.
[b] H-piles may be used as an alternate in place of the pipe piles.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska SARs (*e.g.,* Muto *et al.,* 2022). All values presented in Table 2 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 2—MARINE MAMMAL SPECIES [1] LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY USACE'S ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	131
Family Balaenopteridae (rorquals):						
Minke Whale	*Balaenoptera acutorostrata*	AK	-, -, N	N/A (N/A, N/A, N/A) [5]	UND	0
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	-, -, N	1,920 [6] (N/A, 1,920, 2019).	19	1.3
Killer Whale	*Orcinus orca*	Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	-, -, N	587 [6] (N/A, 587, 2012)	5.9	0.8
Family Monodontidae (white whales):						
Beluga Whale	*Delphinapterus leucas*	Eastern Bering Sea	-,-, N	12,269 (0.118, 11,112, 2017).	267	226
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Bering Sea	-, -, Y	UNK (UNK, N/A, 2008) [7]	UND [7]	0.4
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	*Eumetopias jubatus*	Western	E, D, Y	52,932 [8] (N/A, 52,932, 2019).	318	254
Family Phocidae (earless seals):						
Bearded Seal	*Erignathus barbatus*	Beringia	T, D, Y	UND (UND, UND, 2013) [9].	[9] UND	6,709
Ribbon Seal	*Histriophoca fasciata*	Unidentified	-, -, N	184,697 (N/A, 163,086, 2013).	9,785	163
Ringed Seal	*Pusa hispida*	Arctic	T, D, Y	UND (UND, UND, 2013) [10].	[10] UND	6,459
Spotted Seal	*Phoca largha*	Bering	-, -, N	461,625 (N/A, 423,237, 2013).	25,394	5,254

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers of minke whales in Alaska.

[6] Nest is based upon counts of individuals identified from photo-ID catalogs.

[7] The best available abundance estimate and Nmin are likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range. PBR for this stock is undetermined due to this estimate being older than 8 years.

[8] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys.

[9] Reliable population estimate for the entire stock not available. PBR is based upon the negatively biased Nmin for bearded seals in the U.S. portion of the stock.

[10] A reliable population estimate for the entire stock is not available. Using a sub-sample of data collected from the U.S portion of the Bering Sea, an abundance estimate of 171,418 ringed seals has been calculated, but this estimate does not account for availability bias due to seals in the water or in the shore fast ice zone at the time of the survey. The actual number of ringed seals in the U.S. portion of the Bering Sea is likely much higher. Using the Nmin based upon this negatively biased population estimate, the PBR is calculated to be 4,755 seals, although this is also a negatively biased estimate.

As indicated above, all 11 species (with 12 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed survey areas are included in Table 3–1 of USACE's IHA application. While these species could occur in the

area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Cuvier's beaked whale, Central North Pacific humpback whale, Dall's porpoise, harbor seal, Pacific white-sided dolphin, sperm whale, Stejneger's beaked whale, blue whale, Western North Pacific gray whale, bowhead whale, North Pacific right whale, sei whale, Northern fur seal could all occur in the project area. We do not anticipate take of Cuvier's beaked whale, Cook Inlet beluga whale, Dall's porpoise, Pacific white-sided dolphin, sperm whale, Stejneger's beaked whale, blue whale, and Western North Pacific gray whale as these species' and stocks' ranges generally do not extend as far north as Nome. While it is possible that beluga whales from the Eastern Chukchi Sea and Beaufort Sea stocks could occur in the project area during the winter, spring, and fall, as both stocks migrate between the Bering and Beaufort seas (Citta *et al.* 2017), animals from the Beaufort Sea stock depart the Bering Sea in early spring, migrate through the Chukchi Sea and into the Canadian waters of the Beaufort Sea where they remain in the summer and fall, and return to the Bering Sea in late fall (NMFS 2022c; *i.e.,* are generally not expected to occur in the project area during the planned work period). Animals from the Eastern Chukchi Sea stock depart the Bering Sea in late spring and early summer, migrate through the Chukchi Sea and into the western Beaufort Sea where they remain in the summer, and return to the Bering Sea in the fall (NMFS 2022c). Tagging data from Citta *et al.* (2017) found that belugas from the Eastern Chukchi Sea and Beaufort Sea stocks moved into the central and southern Bering Sea during winter months, but did not move into Norton Sound (Citta *et al.* 2017). Therefore, given that both stocks are already unlikely to occur in the project area during most or all of the work period, and the animals in Citta *et al.* (2017) did not enter Norton Sound, animals from these stocks are not anticipated to be taken by project activities. Bowhead whale, North Pacific right whale, sei whale, Northern fur seal, fin whale, Western North Pacific humpback whale, are considered rare in Nome. While some of the species or stocks listed herein could occur on the vessel transit route, as noted above, we do not anticipate take of marine mammals due to vessel transit.

In addition, the Pacific walrus may be found in Nome, AK. However, Pacific walrus (*Odobenus rosmarus divergens*) are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

Eastern North Pacific gray whales occur in the project area, though they are not anticipated to occur in high numbers. Most whales in this stock spend the summer and fall months feeding in the Chukchi, Beaufort, and northwestern Bering Seas and winter in Baja California, Mexico (Carretta *et al.* 2019). Eastern North Pacific gray whales have been experiencing an Unusual Mortality Event (UME) since 2019 when large numbers of whales began stranding from Mexico to Alaska. As of March 14, 2023, approximately 307 gray whales have stranded in the U.S. and 633 total throughout the U.S., Canada, and Mexico since 2019 (NOAA 2023). Preliminary necropsy results conducted on a subset of the whales indicated that many whales showed signs of nutritional stress, however, these findings are not consistent across all of the whales examined (NOAA 2023). This UME is ongoing and similar to that of 1999 and 2000 when large numbers of gray whales stranded along the eastern Pacific coast (Moore *et al.* 2001; Gulland *et al.* 2005). Oceanographic factors limiting food availability for whales was identified as a likely cause of the prior UME and may also be influencing the current UME (LeBouef *et al.* 2000; Moore *et al.* 2001; Minobe 2002; Gulland *et al.* 2005).

Minke Whale

Minke whales occur in polar, temperate, and tropical waters worldwide in a range extending from the ice edge in the Arctic during the summer to near the equator during winter. Minke whales in Alaska are considered migratory and typically occur in the Arctic during summer months and near the equator during winter months (NMFS 2022g).

Killer Whale

Killer whales occur in every ocean in the world and are the most widely distributed of all cetaceans. Along the west coast of North America, killer whales occur along the entire Alaska coast (Braham and Dahlheim 1982). Killer whales that occur in Norton Sound are likely following seasonal movements of whales and pinnipeds.

Beluga Whale

Five beluga whale stocks occur in Alaska: The Eastern Chukchi Sea Stock, the Beaufort Sea Stock, the Eastern Bering Sea Stock, the Bristol Bay Stock, and the Cook Inlet Stock. While each stock is unique and isolated from one another genetically and/or physically, there is some crossover of the Eastern Chukchi Sea and the Eastern Bering Sea Stock during the late summer. Beluga whales in the project area are anticipated to be from the Eastern Bering Sea stock. The Eastern Bering Sea stock remains in the Bering Sea and migrates south near Bristol Bay in winter and returns north to Norton Sound and the mouth of the Yukon River in summer (Suydam 2009; Hauser *et al.* 2014; Citta *et al.* 2017; Lowry *et al.* 2019).

Beluga whales use Norton Sound during the entire open-water season, generally moving to southern Bering Sea waters during winter due to high ice concentrations in Norton Sound. During the spring and summer, beluga whales tend to concentrate in the eastern half of the Sound (Oceana and Kawerak 2014), but the whales may be seen migrating in large numbers close to the shoreline near Nome in late autumn (ADFG 2012). Jewett (1997) stated beluga whales ''appear nearshore with the onset of herring spawning in early summer and feed on these as well as a wide variety of other fish congregating or migrating nearshore.'' They are often seen passing very close to the end of the Nome causeway during the fall migration and have been occasionally spotted within the Nome Outer Basin (USACE personal communication with Charlie Lean, 2019). Large groups of beluga have been observed in fall in front of Cape Nome and near Topkok (Oceana and Kawerak 2014).

Norton Sound includes three biologically important areas (BIAs) identified as important for feeding by Eastern Bering Sea belugas (Brower *et al.* 2023). One of these BIAs overlaps the project area. The BIA that overlaps the project area is active May through November, which overlaps USACE's proposed work window (May to October). The BIA scored a 2 for importance, intensity, data support and boundary certainty scores, indicating that it is of moderate importance, has moderately certain boundaries, and moderate data to support the identification of the BIA (see Harrison *et al.* (2023) for additional information about the scoring process used to identify BIAs). The BIA was identified as having dynamic spatiotemporal variability.

Harbor Porpoise

The Bering Sea stock of harbor porpoise occurs within the project area, ranging from throughout the Aleutian Islands and into all waters north of Unimak Pass. The harbor porpoise

frequents nearshore waters and coastal embayments throughout their range, including bays, harbors, estuaries, and fjords less than 650 ft (198 m) deep (NMFS 2018g).

Bearded Seal

Bearded seals prefer moving ice and open water over relatively shallow seafloors. They are closely associated with ice, preferring to winter in the Bering Sea and summer along the pack ice edge in the Chukchi Sea, although many summer in nearshore waters of the Beaufort Sea (NMFS 2022a). Pupping occurs on ice floes primarily in May in the Bering and Chukchi seas. Bearded seals feed primarily at or near the seabed, on benthic invertebrates, and demersal fish. Spring surveys conducted in 1999 and 2000 along the Alaska coast indicate that bearded seals are typically more abundant 20–100 nmi (37—185 km) from shore, except for high nearshore concentrations to the south of Kivalina (Bengtson *et al.* 2000 and 2005; Simpkins *et al.* 2003). Many seals that winter in the Bering Sea move north through the Bering Strait from late April through June and spend the summer in the Chukchi Sea (Burns 1967, 1981).

Bearded seals congregate at the open water found near Cape Nome and Sledge Island in winter and spring (Oceana and Kawerak 2014). Juvenile bearded seals may remain in open water during the summer, feeding in lagoons and rivers, but older individuals migrate north with the retreating pack ice. Juvenile bearded seals have been observed hauled out on land along lagoons and rivers in some areas of Alaska, including in the Bering Strait region in summer to early fall (Gadamus *et al.* 2015; Huntington *et al.* 2015). In addition, satellite tracking data obtained from juvenile bearded seals tagged in Alaska during 2014 to 2018 indicate that during the open-water period (July to October), about half of the seals that hauled out used terrestrial sites located south of the ice edge in Kotzebue Sound and Norton Sound whereas other seals remained near the ice edge and hauled out on ice (Olnes *et al.* 2020).

Critical habitat for the bearded seal was designated in May 2022 and includes marine waters off the coast of Nome (87 FR 19180; April 1, 2022). Essential features established by NMFS for conservation of the bearded Beringia Distinct Population Segment (DPS) include (1) Sea ice habitat suitable for whelping and nursing, which is defined as areas with waters 200 m or less in depth containing pack ice of at least 25 percent concentration and providing bearded seals access to hose waters from the ice; (2) Sea ice habitat suitable as a platform for molting, which is defined as areas with waters 200 m or less in depth containing pack ice of at least 15 percent concentration and providing bearded seals access to those waters from the ice, and (3) Primary prey resources to support bearded seals: Waters 200 m or less in depth containing benthic organisms, including epifaunal and infaunal invertebrates, and demersal fishes.

Since June 1, 2018, elevated ice seal strandings (bearded, ringed and spotted seals) have occurred in the Bering and Chukchi seas in Alaska. This event was declared an Unusual Mortality Event (UME), but is currently considered non-active and is pending closure. Given that the UME is non-active, it is not discussed further as it relates to bearded seals.

Ringed Seal

In winter and early spring when sea ice is at its maximum coverage, ringed seals occur in the northern Bering Sea (including Norton Sound), and throughout the Chukchi and Beaufort Seas. They occur as far south as Bristol Bay in years of extensive ice coverage (Muto *et al.* 2022) but generally are not abundant south of Norton Sound except in nearshore areas (Frost 1985, 1988).

Near Nome, ringed seals often occur in the open water offshore from Cape Nome and Safety Sound (Oceana and Kawerak 2014). Surveys conducted in the Bering Sea in the spring of 2012 and 2013 documented numerous ringed seals in both nearshore and offshore habitat extending south of Norton Sound (79 FR 73010, December 9, 2014; Muto *et al.* 2022).

Critical habitat for the ringed seal was designated in May 2022 and include marine waters within one specific area in the Bering, Chukchi, and Beaufort seas including waters off the coast of Nome (87 FR 19232; April 1, 2022). Essential features established by NMFS for conservation of the ringed seal are (1) snow-covered sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing, which is defined as waters 3 m or more in depth (relative to Mean Lower Low Water (MLLW)) containing areas of seasonal landfast (shorefast) ice or dense, stable pack ice, which have undergone deformation and contain snowdrifts of sufficient depth to form and maintain birth lairs (typically at least 54 cm deep); (2) sea ice habitat suitable as a platform for basking and molting, which is defined as areas containing sea ice of 15 percent or more concentration in waters 3 m or more in depth (relative to MLLW); and (3) primary prey resources to support Arctic ringed seals, which are defined to be small, often schooling, fishes, in particular, Arctic cod (*Boreogadus saida*), saffron cod (*Eleginus gracilis*), and rainbow smelt (*Osmerus dentex*), and small crustaceans, in particular, shrimps and amphipods.

Since June 1, 2018, elevated ice seal strandings (bearded, ringed and spotted seals) have occurred in the Bering and Chukchi seas in Alaska. This event was declared an Unusual Mortality Event (UME), but is currently considered non-active and is pending closure. Given that the UME is non-active, it is not discussed further as it relates to ringed seals.

Spotted Seal

From late fall through spring, spotted seal habitat use is primarily associated with seasonal sea ice. Most spotted seals spend the rest of the year making periodic foraging trips from haulout sites onshore or on sea ice (NMFS 2022b).

Most summer and fall concentrations of Norton Sound spotted seals are in the eastern portion of the Sound, where herring and small cod are more abundant. Spotted seals are reportedly more sensitive to human disturbances than other seals and have been displaced from some haulout and feeding areas due to such disturbance. However, spotted seals are regularly seen at the Port of Nome and within the harbor area, especially before or after the busy summer season, sometimes hauled out on the beach or breakwater (USACE personal communication with Charlie Lean, 2019). The existing Outer Basin at the Port of Nome, since the construction of the new entrance channel and east breakwater in 2006, has become the new river mouth and a sort of artificial lagoon of the Snake River. Seals and other marine mammals tend to congregate there, especially in the autumn (Oceana and Kawerak 2014). Spotted seals are an important subsistence species for Alaska Native hunters.

Since June 1, 2018, elevated ice seal strandings (bearded, ringed and spotted seals) have occurred in the Bering and Chukchi seas in Alaska. This event was declared an Unusual Mortality Event (UME), but is currently considered non-active and is pending closure. Given that the UME is non-active, it is not discussed further.

Steller Sea Lion

Steller sea lions in the project area are anticipated to be from the Western stock, which includes all Steller sea

lions originating from rookeries west of Cape Suckling (144° West longitude). The centers of abundance and distribution for western DPS Steller sea lions are located in the Gulf of Alaska and Aleutian Islands. At sea, Steller sea lions commonly occur near the 656-foot (200-meter) depth contour but have been found from nearshore to well beyond the continental shelf (Kajimura and Loughlin 1988). Sea lions move offshore to pelagic waters for feeding excursions.

Observations suggest that Steller sea lions are becoming common in the northern Bering Sea, including Norton Sound. Sea lions have been spotted hauling out in small numbers at Sledge Island, about 22 miles (mi; 35.4 km) west of Nome. Their change in range is perhaps attributed to climate-change-driven, northward movement of pelagic fish prey species, such as Pacific cod (USACE personal communication with Gay Sheffield, 2018).

The nearest Steller sea lion critical habitat to the Port of Nome is on the east shore of St. Lawrence Island, about 140 mi (225.3 km) to the southwest. However, Steller sea lions, especially juveniles and non-breeding males, can range through waters far beyond their primary use areas.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.* 1995; Wartzok and Ketten 1999; Au and Hastings 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.* 2009; Reichmuth and Holt 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from vibratory and impact pile driving. The effects of underwater noise from USACE's proposed activities have the potential to result in Level B harassment only of marine mammals.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day

(Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; NMFS 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between impulsive and non-impulsive sound sources is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007).

USACE plans to use two types of hammers, impact, and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces sounds pressure levels (SPLs) 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

The likely or possible impacts of USACE's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site(s) close enough to be harassed due to the presence of equipment or personnel would be within the Level A or Level B harassment zones from pile driving/removal and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal equipment is the primary means by which marine mammals may be harassed from USACE's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2003; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower $SEL_{cum,}$ the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher $SEL_{cum,}$ the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *Masking,* below). For example, a marine

mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin (*Tursiops truncatus*), beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and for pinnipeds in water, measurements of TTS are limited to harbor seals (*Phoca vitulina*), elephant seals (*Mirounga angustirostris*), and California sea lions (*Zalophus californianus*). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times. The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.* 2019a, 2019b, 2020a, 2020b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.* 2010; Kastelein *et al.* 2014; Kastelein *et al.* 2015a; Mooney *et al.* 2009). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources. Nachtigall *et al.* (2018) and Finneran (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS 2018).

Activities for this project include impact and vibratory pile driving and vibratory pile removal. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for threshold shift declines.

Behavioral harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010; Southall *et al.* 2021). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists, along with contextual factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. There are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to respiration, interference with or alteration of vocalization, avoidance, and flight.

Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans.

Alteration of Feeding Behavior—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.* 2001; Nowacek *et al.* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007; Melcón *et al.* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Silve *et al.* 2016; Wensveen *et al.* 2017). A determination of whether foraging

disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal. Goldbogen *et al.* (2013) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure. Information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal will help better inform a determination of whether foraging disruptions incur fitness consequences.

Avoidance—Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.* 1995). Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, *etc.*). Often avoidance is temporary, and animals return to the area once the noise has ceased. Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.* 2001; Finneran *et al.* 2003; Kastelein *et al.* 2006a; Kastelein *et al.* 2006b; Kastelein *et al.* 2015b; Kastelein *et al.* 2015c; Kastelein *et al.* 2018). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.* 1994; Goold 1996; Goold and Fish 1998; Morton and Symonds 2002; Hiley *et al.* 2021) and to some extent in mysticetes (Malme *et al.* 1984; McCauley *et al.* 2000; Gailey *et al.* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.* 2004; Bejder *et al.* 2006; Teilmann *et al.* 2006).

Forney *et al.* (2017) described the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking. In cases of Western gray whales (*Eschrichtius robustus*) (Weller *et al.* 2006) and beaked whales (*Ziphius cavirostris*), anthropogenic effects in areas where they are resident or exhibit site fidelity could cause severe biological consequences, in part because displacement may adversely affect foraging rates, reproduction, or health, while an overriding instinct to remain in the area could lead to more severe acute effects. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts.

Flight Response—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England 2001). There are limited data on flight response for marine mammals in water; however, there are examples of this response in species on land. For instance, the probability of flight responses in Dall's sheep *Ovis dalli dalli* (Frid, 2003), hauled out ringed seals (Born *et al.* 1999), Pacific brant (*Branta bernicla nigricans*), and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft more directly approached groups of these animals (Ward *et al.* 1999). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been observed in marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates and efficiency (*e.g.,* Beauchamp and Livoreil 1997; Fritz *et al.* 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch 1992; Daan *et al.* 1996; Bradshaw *et al.* 1998).

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

To assess the strength of behavioral changes and responses to external sounds and SPLs associated with changes in behavior, Southall *et al.* (2007) developed and utilized a severity scale, which is a 10 point scale ranging from no effect (labeled 0), effects not likely to influence vital rates (low; labeled from 1 to 3), effects that could affect vital rates (moderate; labeled 4 to 6), to effects that were thought likely to influence vital rates (high; labeled 7 to 9). Southall *et al.* (2021) updated the severity scale by integrating behavioral context (*i.e.,* survival, reproduction, and foraging) into severity assessment. For non-impulsive sounds (*i.e.,* similar to the sources used during the proposed action), data suggest that exposures of pinnipeds to sources between 90 and 140 dB re 1 μPa do not elicit strong behavioral responses; no data were available for exposures at higher received levels for Southall *et al.* (2007) to include in the severity scale analysis. Reactions of harbor seals were the only available data for which the responses could be ranked on the severity scale. For reactions that were recorded, the

majority (17 of 18 individuals/groups) were ranked on the severity scale as a 4 (defined as moderate change in movement, brief shift in group distribution, or moderate change in vocal behavior) or lower; the remaining response was ranked as a 6 (defined as minor or moderate avoidance of the sound source).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness. Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.* 1996; Hood *et al.* 1998; Jessop *et al.* 2003; Krausman *et al.* 2004; Lankford *et al.* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation; Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further.

Marine Mammal Habitat Effects

USACE's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see *Masking* discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

In-Water Construction Effects on Potential Foraging Habitat

The total seafloor area likely impacted by the project is relatively small compared to the available habitat in Norton Sound and nearby areas in the Bering Sea. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6 m) radius around the pile (Everitt *et al.* 1980). Turbidity and sedimentation effects are expected to be short-term, minor, and localized. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann 1999; Fay 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley 2012; Pearson *et al.* 1992; Skalski *et al.* 1992; Santulli *et al.* 1999; Paxton *et al.* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.* 2013; Wardle *et al.* 2001; Jorgenson and Gyselman 2009).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.* 2012b; Casper *et al.* 2013).

The most likely impact to fishes from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated.

Construction activities have the potential to have adverse impacts on forage fish in the project area in the form of increased turbidity. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish in the proposed project area. However, fish in the proposed project area would be able to move away from and avoid the areas where increase turbidity may occur. Given the limited area affected and ability of fish to move to other areas, any effects on forage fish are expected to be minor or negligible.

In summary, given the short daily duration of sound associated with individual pile driving and removal events and the relatively small areas being affected, pile driving and removal activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and/or

TTS for individual marine mammals resulting from exposure to construction activities. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* implementation of shutdown zones) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.* 2007, 2021; Ellison *et al.* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

USACE's activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). USACE's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the Table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 752 km^2 (290 mi^2), and the calculated distance to the farthest behavioral harassment isopleth is approximately 21.5 km (13.4 mi).

The project includes vibratory pile installation and removal and impact pile driving. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in Table 5. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 5—SOUND SOURCE LEVELS FOR PILE DRIVING ACTIVITIES

Pile type	Vibratory sound source levels				Impact sound source levels [1]			
	SPL_{RMS}	SEL	Peak	Literature source	SPL_{RMS}	SEL	Peak	Literature source
Temporary template piles (Pipe piles ≤24″).	154.0	144.0	N/A	Caltrans (2020) ..	189.0	178.0	203.0	Caltrans (2015).
Alternate Temporary template piles (H-piles 14″).	*150.0*	*147.0*	*165.0*	*Caltrans (2020) ..*	*178.0*	*166.0*	*200.0*	*Caltrans (2020).*
Anchor piles (14″ HP14x89 or similar).	150.0	147.0	165.0	Caltrans (2020) ..	178.0	166.0	200.0	Caltrans (2020).
Sheet piles (20″ PS31 or similar)	160.7	161.1	171.5	PND (2016, 2020).	189.0	179.0	205.0	Caltrans (2015).
Fender piles (Pipe piles 36″)	170.0	159.0	191.0	Caltrans (2015) ..	193.0	183.0	210.0	Caltrans (2015).

[1] USACE anticipates that all piles would be installed/removed using a vibratory hammer. However, if conditions prevent successful installation with a vibratory hammer, USACE would use an impact hammer to complete installation.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log10 (R1/R2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for the Port of Nome are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below.

TABLE 6—USER SPREADSHEET INPUTS (SOURCE LEVELS PROVIDED IN TABLE 5)

Pile type	Installation/removal	Minutes per pile (vibratory) [1]	Strikes per pile (impact) [1]	Piles per day
Temporary template piles (Pipe piles ≤24″)	Installation	10	20	20.
	Removal	10	.....	20.
(Alternate) Temporary template piles (H-piles 14″).	Installation	10	20	(20).
	Removal	(10)	.....	(20).
Anchor piles (14″ HP14x89 or similar)	Installation	10	20	20.
Sheet piles (20″ PS31 or similar)	Installation	10 (20 per pair)	10	28 (14 pairs).
Fender piles (Pipe piles 36″)	Installation	10	20	12.

[1] USACE anticipates that all piles would be installed/removed using a vibratory hammer. However, if conditions prevent successful installation with a vibratory hammer, USACE would use an impact hammer to complete installation.

TABLE 7—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FROM VIBRATORY AND IMPACT PILE DRIVING

Pile type	Level A harassment isopleths (m)					Level B harassment isopleth (m)
	LF	MF	HF	PW	OW	
VIBRATORY						
Temporary template piles (Pipe piles ≤24″)	5	<1	7	3	<1	1,848
(Alternate) Temporary template piles (H-piles 14″)	3	<1	4	2	<1	1,000
Anchor piles (14″ HP14x89 or similar)	3	<1	4	2	<1	1,000
Sheet piles (20″ PS31 or similar)	18	2	27	11	<1	5,168
Fender piles (Pipe piles 36″)	43	4	64	26	2	21,544
IMPACT						
Temporary template piles (Pipe piles ≤24″)	252	9	300	135	10	858
(Alternate) Temporary template piles (H-piles 14″)	40	1	48	21	2	159
Anchor piles (14″ HP14x89 or similar)	40	1	48	21	2	159
Sheet piles (20″ PS31 or similar)	231	8	276	124	9	858
Fender piles (Pipe piles 36″)	386	14	459	206	15	1,585

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. We describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. A summary of proposed take, including as a percentage of population for each of the species, is shown in Table 9.

Gray Whale

Various gray whale density and occurrence information is available for the Bering, Chukchi, and Beaufort Seas (*e.g.,* Clarke *et al.* 2020; Ferguson *et al.* 2018a). Ljungblad *et al.* (1982) and Ljungblad and Moore (1983) summarized aerial surveys conducted in the Bering Sea including the waters of Norton Sound in the early 1980s. Both reported gray whales feeding in large numbers in Norton Sound and waters near St. Lawrence Island. During the Chukchi Sea Environmental Studies Program (CSESP) a large number of gray whales (n = 55, including 2 calves) were observed feeding in late July approximately 130 km from the Port of Nome (Lomac-MacNair *et al.* 2022). During the Quintillion subsea fiber optic cable project three sightings of eight total gray whales were detected within 60 km of Nome, four during July and four during November 2016 (Blees *et al.* 2017).

However, NMFS was unable to locate data describing frequency of gray whale occurrence or density within the project area or in Norton Sound more generally. USACE conducted monitoring at the project site on 19 calendar days during 2019 and 2021. USACE did not detect gray whales during that monitoring, but they are known to occur in Norton Sound and have been sighted during previous aerial line-transect surveys in Norton Sound (personal communication; Megan Ferguson, February 21, 2023).

NMFS estimates that a gray whale or group of gray whales may enter the project area periodically throughout the duration of the construction period, averaging one gray whale per week. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS proposes to authorize 12 takes by Level B harassment of gray whale.

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the already low frequency of gray whales entering the area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of gray whale. Therefore, USACE did not request take by Level A harassment of gray whale, nor is NMFS is proposing to authorize any.

Minke Whale

Various minke whale density and occurrence information is available for the Bering, Chukchi, and Beaufort Seas (*e.g.,* Clarke *et al.* 2020; Moore *et al.* 2002). During CSESP surveys (2008–2014), minke whales were observed near the Port of Nome (Lomac-MacNair *et al.* 2022). No minke whales were seen during monitoring efforts at Nome during the 2016 Quintillion subsea fiber optic cable project (Blees *et al.* 2017). NMFS was unable to locate data describing frequency of minke whale occurrence, group size, or density within the project area or in Norton Sound more generally. USACE did not detect minke whales during its 2019 and 2021 monitoring, but they are known to occur in Norton Sound and have been sighted during previous aerial line-transect surveys in Norton Sound (personal communication; Megan Ferguson, February 21, 2023).

NMFS estimates that a minke whale may enter the project area periodically throughout the duration of the construction period, averaging one minke whale per week. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS proposes to authorize 12 takes by Level B harassment of minke whale.

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the already low frequency of minke whales entering the area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of minke whale. Therefore, USACE did not request take by Level A harassment of minke whale, nor is NMFS is proposing to authorize any.

Killer Whale

Limited information regarding killer whale occurrence in the Nome area is available. Waite *et al.* (2002) estimated 391 (95 percent CI = 171–894) killer whales of all types in the southeastern Bering Sea using line-transect methods and indicates that density of killer whales is also high in this area (.0025 whales per km^2). During the Quintillion subsea fiber optic cable project, a single killer whale was recorded within 60 km of Nome during July 2016 (Blees *et al.* 2017). USACE did not detect killer

whales during its 2019 and 2021 monitoring.

NMFS estimates that 2 groups of 15 killer whales may enter the project area over the duration of the construction period. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS conservatively proposes to authorize 30 takes by Level B harassment of killer whale (2 groups of 15 animals). NMFS anticipates that these takes could occur to the Eastern North Pacific Alaska Resident stock, the Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock, or some combination of the two.

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the already low occurrence of killer whales in the area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of killer whale. Therefore, USACE did not request take by Level A harassment of killer whale, nor is NMFS is proposing to authorize any.

Harbor Porpoise

Moore *et al.* (2002) reported density estimates for harbor porpoise derived from vessel survey data collected on visual line transect surveys for cetaceans in the central–eastern Bering Sea (CEBS) in July and August 1999 and in the southeastern Bering Sea (SEBS) in June and July 2000. Harbor porpoise were seen throughout the coastal (shore to 50 m) and middle shelf (50–100 m) zones in the SEBS with sighting in the coastal zone over four times that of the middle shelf zone. Relatively few harbor porpoise were reported in the CEBS. Density for harbor porpoise in the CEBS was 0.0035 porpoise/km^2 and in the SEBS was 0.012 animals/km^2. During the Quintillion subsea fiber optic cable project four sightings of 8 total harbor porpoise were recorded within 60 km of Nome, four each during July and August 2016 (Blees *et al.* 2017). USACE detected one harbor porpoise during its 2019 and 2021 monitoring.

Clarke *et al.* (2019) indicated a maximum group size of four harbor porpoise in the Distribution and Relative Abundance of Marine Mammals in the Eastern Chukchi and Western Beaufort Seas, 2018 Annual Report (Clarke *et al.* 2019). NMFS estimates that one group of four harbor porpoise may enter the project area every other week during the construction period. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS conservatively proposes to authorize 24 takes by Level B harassment of harbor porpoise (1 groups of 4 animals × 6 weeks).

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities, and it did not request take by Level A harassment of harbor porpoise. For some activities (*i.e.,* impact driving of fender piles), the shutdown zones extends farther than Protected Species Observers (PSO) may be able to reliably detect harbor porpoise. However, given the portion of the zone within which PSOs could reliably detect a harbor porpoise, the infrequency of harbor porpoise observations during USACE's 2019 and 2021 monitoring, and harbor porpoise sensitivity to noise, NMFS does not anticipate take by Level A harassment of harbor porpoise, nor is NMFS is proposing to authorize any.

Beluga Whale

Beluga whales use Norton Sound during the entire open-water season, generally moving to southern Bering Sea waters during winter due to high ice concentrations in Norton Sound. During the spring and summer, beluga whales tend to concentrate in the eastern half of the Sound (Oceana and Kawerak 2014), but the whales may be seen migrating in large numbers close to the shoreline near Nome in late autumn (ADFG 2012). Jewett (1997) stated beluga whales ''appear nearshore with the onset of herring spawning in early summer and feed on these as well as a wide variety of other fish congregating or migrating nearshore.'' They are often seen passing very close to the end of the Nome causeway during the fall migration and have been occasionally spotted within the Nome Outer Basin (USACE personal communication with Charlie Lean, 2019). Large groups of beluga have been observed in fall in front of Cape Nome and near Topkok (Oceana and Kawerak 2014). In 2012, two beluga whales from the Eastern Bering Sea stock were tagged near Nome. Prior to being tagged both were known to range throughout Norton Sound. The first of the two tagged belugas left Norton Sound in early November and the second departed in mid-November (Citta *et al.* 2017). No beluga whales were seen during monitoring efforts at Nome during the 2016 Quintillion subsea fiber optic cable project (Blees *et al.* 2017).

USACE detected 129 beluga whales (n = 75 during September 2019, n = 45 during September 2021, and n = 12 during October 2021) over 154 hours of monitoring on 19 days in 2019 and 2021, making beluga whales the most frequently detected species during that monitoring period. Assuming that USACE would conduct a 12-hour work day on average, the pre-activity monitoring suggests a detection rate of approximately 10 beluga whales per day.

NMFS conservatively estimates that 15 beluga whales may enter the project area per day throughout the construction period. While 15 is higher than the detection rate reported from USACE's 2019 and 2021 monitoring, the monitoring was conducted by one or two PSOs, and therefore, only a fraction of the area that would comprise the Level B harassment zones for this project was observed. Therefore, NMFS conservatively proposes to authorize 1,275 takes by Level B harassment of beluga whale (15 animals × 85 days).

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of beluga whale. Therefore, USACE did not request take by Level A harassment of beluga whale, nor is NMFS is proposing to authorize any.

Steller Sea Lion

USACE did not observe any Steller sea lions during the 2019 and 2021 monitoring. Additional data regarding Steller sea lion occurrence in the Nome area is very limited. However, Steller sea lions are known to occur in the area, and observations suggest that Steller sea lions are becoming common in the northern Bering Sea, including Norton Sound. Sea lions have been detected hauling out in small numbers at Sledge Island, about 22 mi (35.4 km) west of Nome. Their change in range is perhaps attributed to climate-change-driven, northward movement of pelagic fish prey species, such as Pacific cod (USACE personal communication with Gay Sheffield, 2018). Further, during the Quintillion subsea fiber optic cable project in August 2016, a Steller sea lion was detected within 60 km of Nome (Blees *et al.* 2017).

NMFS conservatively estimates that one Steller sea lion may enter the project area per day during the construction period. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS conservatively proposes to authorize 85 takes by Level B harassment of Steller sea lion (1 animal × 85 days).

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the already low occurrence of Steller sea lion in the area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of Steller sea lion. Therefore, USACE did not request take by Level A harassment of Steller sea lion, nor is NMFS is proposing to authorize any.

Spotted Seal

Most summer and fall concentrations of Norton Sound spotted seals are in the eastern portion of the Sound, where herring and small cod are more abundant. However, spotted seals are regularly seen at the Port of Nome and within the harbor area, especially before or after the busy summer season, sometimes hauled out on the beach or breakwater (USACE personal communication with Charlie Lean, 2019). Since the construction of the new entrance channel and east breakwater in 2006, the existing Outer Basin at the Port of Nome has become the new river mouth and a sort of artificial lagoon of the Snake River. Seals and other marine mammals tend to congregate there, especially in the autumn (Oceana and Kawerak 2014). During the Quintillion subsea fiber optic cable project, a total of 10 spotted seals were recorded within 60 km of Nome during July and August 2016 (Blees *et al.* 2017).

USACE detected 23 spotted seals during its 2019 and 2021 monitoring, making spotted seals the second most frequently detected species during that monitoring. Assuming that USACE would conduct a 12-hour work day on average, the pre-activity monitoring suggests a detection rate of approximately two spotted seals per day.

NMFS conservatively estimates that 20 spotted seals may enter the project area per day throughout the construction period. While 20 is higher than the detection rate reported from USACE's 2019 and 2021 monitoring, the monitoring was conducted by one or two PSOs, and therefore, only a fraction of the area that would comprise the Level B harassment zones for this project was observed. Therefore, NMFS conservatively proposes to authorize 1,700 takes by Level B harassment of spotted seals (20 animals × 85 days).

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of spotted seal. Therefore, USACE did not request take by Level A harassment of spotted seal, nor is NMFS is proposing to authorize any.

Ringed Seal

Near Nome, ringed seals often occur in the open water offshore from Cape Nome and Safety Sound (Oceana and Kawerak 2014). Surveys conducted in the Bering Sea in the spring of 2012 and 2013 documented numerous ringed seals in both nearshore and offshore habitat extending south of Norton Sound (79 FR 73010, December 9, 2014; Muto *et al.* 2022). During the Quintillion subsea fiber optic cable project two ringed seals were recorded within 60 kilometers (km) of Nome during July 2016 (Blees *et al.* 2017). Braham *et al.* (1984) reported ringed seal densities ranging from 0.005 to 0.017 in the Bering Sea. Bengtson *et al.* (2005) reported ringed seal densities ranging from 1.62 to 1.91 in the Alaskan Chukchi Sea. Aerts *et al.* (2013) report combined ringed and spotted seal densities of 0.011 to 0.091 in the Northeastern Chukchi Sea. USACE did not detect ringed seals during its 2019 and 2021 monitoring.

Neither USACE nor NMFS were able to locate more recent occurrence or density information for ringed seals in or near Norton Sound, beyond that described above. Therefore, USACE estimated the density of ringed seals in the project area to be 0.02 seals/km^2, slightly higher than the dated, but most local, Braham *et al.* (1984) Bering Sea densities. Unable to locate more recent data for the area, NMFS concurs with this estimate.

To calculate take by Level B harassment of ringed seal, USACE multiplied the estimated density (0.02 animals/km^2) by the area of the Level B harassment zone for a given activity by the number of days that activity would occur (Table 8). NMFS concurs with this method and is conservatively proposing to authorize 92 takes by Level B harassment of ringed seal.

TABLE 8—AREA OF LEVEL B HARASSMENT ZONES AND NUMBER OF DAYS ON WHICH EACH ACTIVITY WOULD OCCUR

	Temporary template piles	Anchor piles	Sheet piles	Fender piles
Number of Days of Activity	[a] 24	2	57	2
Level B Harassment Zone (km^2)	8.41	2.96	50.46	751.9

[a] Installation and removal.

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of ringed seal. Therefore, USACE did not request take by Level A harassment of ringed seal, nor is NMFS is proposing to authorize any.

Ribbon Seal

Ribbon seals occur in the Bering Sea from late March to early May. From May to mid-July the ice recedes, and ribbon seals move further north into the Bering Strait and the southern part of the Chukchi Sea (Muto *et al.* 2022). An estimated 6,000–25,000 ribbon seals from the eastern Bering Sea occur in the Chukchi Sea during the spring open-water period (Boveng *et al.* 2017). Braham *et al.* (1984) reported a maximum density of 0.002 seals/km^2 from 1976 aerial surveys of ribbon seals in the Bering Sea. USACE did not detect ribbon seals during its 2019 and 2021 monitoring.

To calculate take by Level B harassment of ribbon seal, USACE multiplied the estimated density (0.002 animals/km^2) by the area of the Level B harassment zone for a given activity by the number of days that activity would occur (Table 8). NMFS concurs with this method and is conservatively proposing to authorize 9 takes by Level B harassment of ribbon seal.

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the already low occurrence of ribbon seals in the area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level

A harassment of ribbon seal. Therefore, USACE did not request take by Level A harassment of ribbon seal, nor is NMFS is proposing to authorize any.

Bearded Seal

Braham *et al.* (1984) reported bearded seal densities ranging from 0.006 and 0.782 seals per km² in the Bering Sea. Bengtson *et al.* (2005) reported bearded seal densities ranging from 0.07 to 0.14 seals/km² in the Alaskan Chukchi Sea. In the spring of 2012 and 2013, U.S. and Russian researchers conducted aerial abundance and distribution surveys over the entire ice-covered portions of the Bering Sea (Moreland *et al.* 2013). Conn *et al.* (2014), using a sub-sample of the data collected from the U.S. portion of the Bering Sea in 2012, calculated a posterior mean density estimate using an effective study area of 767,114 km² of 0.39 bearded seals/km² (95 percent CI 0.32–0.47). Results from 2006 helicopter transect surveys over a 279,880 km² subset of the study area calculated density estimates of 0.22 bearded seals/km² (95 percent CI 0.12–0.61; Ver Hoef *et al.* 2013). USACE detected one bearded seal during its 2019 and 2021 monitoring.

To calculate take by Level B harassment of bearded seal, USACE multiplied the estimated density (0.39 animals/km²) by the area of the Level B harassment zone for a given activity by the number of days that activity would occur (Table 8). NMFS concurs with this method and is proposing to conservatively authorize 2,554 takes by Level B harassment of bearded seal.

USACE is planning to implement shutdown zones that extend to or exceed the Level A harassment isopleth for all activities. Therefore, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of bearded seal. Therefore, USACE did not request take by Level A harassment of bearded seal, nor is NMFS is proposing to authorize any.

TABLE 9—PROPOSED TAKE AND PROPOSED TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Proposed take (Level B harassment only)	Stock abundance	Proposed take as a percentage of stock abundance
Bearded Seal	Beringia	2,554	N/A	N/A
Ribbon Seal	Unidentified	9	184,697	<1
Ringed Seal	Arctic	92	N/A	N/A
Spotted Seal	Bering	1,700	461,625	<1
Steller sea lion	Western	85	[b] 52,932	<1
Beluga whale	Eastern Bering Sea	1,275	12,269	10
Harbor Porpoise	Bering Sea	24	N/A	N/A
Killer Whale	Eastern North Pacific Alaska Resident	30	[a] 1,920	2
	Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.		[a] 587	5
Minke Whale	Alaska	12	N/A	N/A
Gray Whale	Eastern North Pacific	12	26,960	<1

N/A = Not applicable.
[a] Nest is based upon counts of individuals identified from photo-ID catalogs.
[b] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in this IHA to reduce the impacts of the activity on subsistence uses are described in the Proposed Mitigation section. Last, the information from this section and the Proposed Mitigation section is analyzed to determine whether the necessary findings may be made in the Unmitigable Adverse Impact Analysis and Determination section.

During open-water months (May through October) species in the area harvested for subsistence uses include beluga whale, ice seals (ringed seal, bearded seal, ribbon seal, and spotted seal), and Steller sea lion.

Eastern Bering Sea belugas are an important nutritional and cultural resource to Alaska Natives and are harvested by more than 20 communities in Norton Sound and the Yukon (Ferguson *et al.* 2018b). The Eastern Bering Sea stock of beluga whales are harvested by nine Norton Sound communities (Elim, Golovin, Koyuk, Nome/Council, Saint Michael, Shaktoolik, Stebbins, Unalakleet, and White Mountain; NSB 2022). Frost and Suydam (2010) reported that of the nine communities, the highest annual harvest is at Koyuk (n=55) and an annual average of 0.6 belugas are harvested by Nome. Nome hunters harvest beluga on the west side of Cape Nome, all the way from Cape Nome to Nome, and from Nome west to Sledge Island (Oceana and Kawerak 2014). Beluga subsistence areas between spring and fall are documented between Cape Nome to Cape Darby and around the east coastline of Norton Sound to Stewart Island (Oceana and Kawerak 2014). Beluga whales have been traditionally hunted in Norton Sound; however, project impacts are not expected to reach traditional harvest areas.

Ice seals are also hunted within the Norton Sound region. Georgette *et al.* (1998) summarizes a subsistence survey of six Norton Sound-Bering Strait communities (Mainland coastal: Brevig Mission, Golovin, Shaktoolik, and Stebbins; Offshore: Savoonga and Gambell) between 1996 and 1997 and reports seals taken for subsistence in all months, with seasonal peaks in spring (May–June) and fall (September–October). Bearded seals, preferred for their large size and quality of meat, were harvested by all communities, but Gambell had the highest harvest rate of any community. Bearded seals are typically harvested in early summer as they migrate northward. Spotted seals, valued for their skins, are reported in large numbers during ice-free months (Georgette *et al.* 1998). Spotted seals occur closer to shore, allowing for easier harvesting than bearded seals or walrus, which occur further from shore and for a shorter window as they migrate north

more quickly (Oceana and Kawerak 2014). Ringed seals, the most abundant and accessible, were harvested in all months and taken in higher numbers than other species from the mainland coastal communities. Ribbon seals are harvested less often than other seals because their distribution does not overlap with most hunting areas and their taste is not preferred (Oceana and Kawerak 2014).

Steller sea lions are rarely harvested in Norton Sound. During the 1996–1997 survey, no Steller sea lion harvest was reported, however, hunters in Gambell, Savoonga, and Brevig Mission reported they do hunt for them occasionally (Georgette *et al.* 1998). Additionally, only 20 Steller sea lions were reported taken between 1992 and 1998 (NMFS 2008; Wolf and Mishler 1999; Wolf and Hutchinson-Scarbrough 1999).

Project activities mostly avoid traditional ice seal harvest windows (noted above) and are generally not expected to negatively impact hunting of seals. However, as noted above, some seal hunting does occur throughout the project period. The project could deter target species and their prey from the project area, increasing effort required for a successful hunt in that area. Construction may also disturb beluga whales, potentially causing them to avoid the project area and reducing their availability to subsistence hunters as well. Additionally, once the project is complete, the increased length and infrastructure at the Port of Nome could impact hunters' ability to access subsistence areas by increasing the time and fuel needed to exit the harbor, and increased vessel traffic at the Port following construction may introduce larger obstacles for subsistence vessels to maneuver and may affect marine mammals and their movements.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation for Marine Mammals and Their Habitat

Shutdown Zones—The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Construction supervisors and crews, PSOs, and relevant USACE staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction. Further, USACE must implement activity-specific shutdown zones as described in Table 10.

TABLE 10—REQUIRED SHUTDOWN ZONES

Pile type	Pile driving method	Shutdown zone (m)	
		Cetaceans	Pinnipeds
Temporary template piles (Pipe piles ≤24″)	Vibratory	10	10
	Impact	300	150
(Alternate) Temporary template piles (H-piles 14″)	Vibratory	10	10
	Impact	300	150
Anchor piles (14″ HP14x89 or similar)	Vibratory	10	10
	Impact	300	150
Sheet piles (20″ PS31 or similar)	Vibratory	30	30
	Impact	300	150
Fender piles (Pipe piles 36″)	Vibratory	70	30
	Impact	500	210
Dredging [a]		300	300

[a] As noted previous, take of marine mammals is not anticipated to occur due to dredging. However, USACE will implement a shutdown zone of 300 m for all marine mammals during dredging.

Protected Species Observers—The placement of PSOs during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. USACE would employ three PSOs for vibratory driving of temporary template pipe piles, sheet piles, and fender pipe piles. For all other activities, USACE would employ one PSO.

Pre and Post-Activity Monitoring—Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 10 are clear of marine mammals.

Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed entering or within the shutdown zones, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. If a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone, activities would begin and Level B harassment take would be recorded.

Monitoring for Level B Harassment—PSOs would monitor the shutdown zones and beyond to the extent that PSOs can see. Monitoring beyond the shutdown zones enables observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Soft Start—Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require IHA applicants conducting activities in or near a traditional Arctic subsistence hunting area and/or that may affect the availability of a species or stock of marine mammals for Arctic subsistence uses to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;
- A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;
- A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and
- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

USACE provided a draft Plan of Cooperation (POC) to affected parties in October 2022. It includes a description of the project, community outreach that has already been conducted, and project mitigation measures for subsistence uses of marine mammals. USACE will continue to meet with the potentially affected communities and subsistence groups to discuss the project, its potential effects on subsistence, and proposed mitigation measures. Prior to the start of construction, USACE will provide notice to the communities of upcoming construction and timing updates using local radio stations, posted flyers, or other appropriate methods to ensure communities are aware of the construction activities. During construction, USACE will host a weekly call with subsistence leaders, construction leads, and the monitoring team lead(s) to discuss the items listed below, and it will distribute a one-page flyer via email to subsistence groups and construction teams.

- Planned construction activities occurring that day;
- Anticipated construction activities over the next day/days;
- Any reported subsistence activities to be aware of (*e.g.,* planned seal hunting and locations);
- Any other notable or pertinent project of subsistence information; and
- Project contact information (phone/email) for real-time communication.

USACE will monitor this information consistently during the construction season and maintain communication with subsistence leaders to employ adaptive measures to mitigate any conflict with subsistence activities.

The POC is a live document and will be updated throughout the project review and permitting process.

In addition to the coordination described above to avoid or mitigate impacts to subsistence harvests of beluga whale and Steller sea lion, much of the project season avoids traditional ice seal harvest windows, which would be expected to avoid impacts to hunting of ice seals during much of the project season. USACE will coordinate with local communities and subsistence groups throughout construction to avoid or mitigate impacts to ice seal harvests.

Based on our evaluation of USACE's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or

cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan, dated February 2023. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

• Other PSOs may substitute other relevant experience, education (degree in biological science or related field) or training for experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization. PSOs may also substitute Alaska native traditional knowledge for experience. (NMFS recognizes that PSOs with traditional knowledge may also have prior experience, and therefore be eligible to serve as the lead PSO.);

• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and

• PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

USACE would employ three PSOs for vibratory driving of temporary template pipe piles, sheet piles, and fender pipe piles. For all other activities, USACE would employ one PSO. One PSO will be have an unobstructed view of all water within the shutdown zone and will be stationed at or near the project activity. Remaining PSOs, when applicable, will observe as much of the Level B harassment zone as possible. The second and third PSOs, when applicable, will monitor from the shoreline approximately 3.5 km to the east and west of the Port of Nome. While the exact monitoring stations have not yet been determined, USACE provided potential locations in Figure A–1 (Appendix A) of its Marine Mammal Monitoring and Mitigation Plan.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

USACE would submit a draft report to NMFS within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. The marine mammal monitoring report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including: (1) The number and type of piles that were driven and the method (*e.g.,* impact, vibratory, down-the-hole); and (2) Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving).

• PSO locations during marine mammal monitoring;

• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

• Upon observation of a marine mammal, the following information: (1) Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) Time of sighting; (3) Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; (4) Distance and location of each observed marine mammal relative to the pile being driven for each sighting; (5) Estimated number of animals (min/max/best estimate); (6) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (7) Animal's closest point of approach and estimated time spent within the harassment zone; (8) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

• Number of marine mammals detected within the harassment zones, by species; and

• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the

Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *itp.davis@noaa.gov*) and to the Alaska regional stranding network (877–925–7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS.

The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed where the proposed activity may affect the availability of a species or stock for taking for subsistence uses (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state that upon receipt of a complete monitoring plan, and at its discretion, NMFS will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan (50 CFR 216.108(d)).

NMFS established an independent peer review panel to review USACE's Monitoring Plan for the Port of Nome Modification Project. NMFS provided the panel with a copy of USACE's monitoring plan and provided them with a list of considerations to guide their discussion of the monitoring plan. The panel met in March 2023 and provided a final report to NMFS containing recommendations for USACE's monitoring plan on April 5, 2023. The Peer Review Panel's full report is posted on NMFS' website at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* NMFS is considering all of the recommendations made by the Peer Review panel and will incorporate appropriate changes in the monitoring requirements of the IHA, if issued. Additionally, NMFS will describe how the Peer Review Panel's findings and recommendations have been addressed in the **Federal Register** notice announcing the final IHA, if issued.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 9, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level B harassment, identified above, when these activities are underway.

The takes by Level B harassment would be due to potential behavioral disturbance. No mortality or serious injury is anticipated given the nature of the activity, and no Level A harassment is anticipated due to USACE's construction method and planned mitigation measures (see Proposed Mitigation section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring; *e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving and removal, although even this reaction has been observed primarily only in association with impact pile driving, which USACE does not plan to conduct expect in scenarios where it is required to successfully advance a pile. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring, particularly as the project is expected to occur over just 85 in-water pile driving days.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. We do not expect pile driving activities to have significant consequences to marine invertebrate populations. Given the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat, including fish and invertebrates, are not expected to cause significant or long-term negative consequences.

The project area overlaps a BIA identified as important for feeding by Eastern Bering Sea belugas (Brower *et al.* 2023). The BIA that overlaps the project area is active May through November, which overlaps USACE's proposed work period (May to October). The BIA is considered to be of moderate importance, has moderately certain boundaries, and moderate data to support the identification of the BIA. The BIA was identified as having dynamic spatiotemporal variability. Regardless of the exact boundary of the BIA, the portion of the BIA that overlaps the project area would be extremely small in comparison to the full BIA. Further, the majority of the southeastern half of Norton Sound is separately identified as a ''child'' of the BIA that overlaps the project area. The child encompasses an especially high-density area where belugas congregate to feed and is considered to be of higher importance than the parent BIA. The child BIA does not overlap the project area, indicating that animals in the Nome area would have available, high quality feeding habitat during the project period without necessarily being disturbed by the construction. Therefore, take of beluga whales using the parent BIA, given both the scope and nature of the anticipate impacts of pile driving exposure, is not anticipated to impact reproduction or survivorship of any individuals.

The project area also overlaps ESA-designated critical habitat for both ringed seals and bearded seals. As described in the Description of Marine Mammals in the Area of Specified Activities section above, for both ringed seals and bearded seals, two of the three essential features identified for conservation of the species are related to sea ice. Given that USACE's project is anticipated to occur in the open water season, impacts from the project on sea ice habitat are not anticipated. The third essential feature for both ringed and bearded seals is primary prey sources to support the species. While the project activities could impact ringed seal and bearded seal foraging activities in critical habitat that overlaps the project area, the overlap between these areas is extremely small in comparison to the full ESA-designated critical habitat for each species, which includes most of the waters within the U.S. EEZ.

As previously described, a UME has been declared for gray whales. However, we do not expect the takes proposed for authorization herein to exacerbate the ongoing UME. No injury, serious injury, or mortality of gray whales is expected or proposed for authorization, and take by Level B harassment is limited (14 takes over the duration of the authorization). As such, the proposed take by Level B harassment of gray whale would not exacerbate or compound upon the ongoing UME.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No injury, serious injury, or mortality is anticipated or authorized;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species;
- While impacts would occur within areas that are important for feeding for multiple stocks, because of the small footprint of the activity relative to the area of these important use areas, and the scope and nature of the anticipated impacts of pile driving exposure, we do not expect impacts to the reproduction or survival of any individuals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of instances of take for each species or stock proposed to be taken as a result of this project is included in Table 9. Our analysis shows that less than one-third of the best available population abundance estimate of each stock could be taken by harassment. The number of animals proposed to be taken for all stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario.

A lack of an accepted stock abundance value for the Alaska stock of minke whale did not allow for the calculation of an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,233 minke whales in coastal waters of the Alaska Peninsula and Aleutian Islands (Zerbini *et al.* 2006). Given 12 proposed takes by Level B harassment for the stock, comparison to the best estimate of stock abundance shows, at most, 1 percent of the stock would be expected to be impacted.

For the Bering Sea stock of harbor porpoise, the most reliable abundance estimate is 5,713, a corrected estimate from a 2008 survey. However, this survey covered only a small portion of the stock's range, and therefore, is considered to be an underestimate for the entire stock (Muto *et al.* 2022). Given the proposed 24 takes by Level B harassment for the stock, comparison to the abundance estimate, which is only a portion of the Bering Sea Stock, shows that, at most, less than one percent of the stock would be expected to be impacted.

For the Alaska stock of bearded seals, a lack of an accepted stock abundance value did not allow for the calculation of an expected percentage of the population that would be affected. As noted in the 2021 Alaska SAR (Muto *et al.* 2022), an abundance estimate is currently only available for the portion of bearded seals in the Bering Sea (Conn *et al.* 2014). The current abundance estimate for the Bering Sea is 301,836 bearded seals. Given the proposed 2,554 takes by Level B harassment for the stock, comparison to the Bering Sea estimate, which is only a portion of the Alaska Stock (also includes animals in the Chukchi and Beaufort Seas), shows that, at most, less than one percent of the stock would be expected to be impacted.

The Alaska stock of ringed seals also lack an accepted stock abundance value, and therefore, we were not able to calculate an expected percentage of the population that may be affected by USACE's project. As noted in the 2021 Alaska SAR (Muto *et al.* 2022), the

abundance estimate available, 171,418 animals, is only a partial estimate of the Bering Sea portion of the population (Conn *et al.* 2014). As noted in the SAR, this estimate does not include animals in the shorefast ice zone, and the authors did not account for availability bias. Muto *et al.* (2022) expect that the Bering Sea portion of the population is actually much higher. Given the proposed 92 takes by Level B harassment for the stock, comparison to the Bering Sea partial estimate, which is only a portion of the Alaska Stock (also includes animals in the Chukchi and Beaufort Seas), shows that, at most, less than one percent of the stock would be expected to be impacted.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Project impacts are generally not expected to reach traditional beluga harvest areas, and much of the project season avoids traditional ice seal harvest windows. While some hunting continues throughout the summer, we do not anticipate that there would be impacts to seals that would make them unavailable for subsistence hunters. Further, USACE will coordinate with local communities and subsistence groups throughout construction and avoid or mitigate impacts to marine mammal harvests by adaptively managing the project.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from USACE's proposed activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS OPR consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

NMFS is proposing to authorize take of Western DPS Steller sea lion, ringed seal (Arctic subspecies), and bearded seal (Beringia DPS), which are listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with the Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to USACE for conducting the Port of Nome Modification Project in Nome, Alaska, during the open water season in 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 21, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–09041 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC966]

Council Coordination Committee Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (GMFMC) will host a meeting of the Council Coordination Committee (CCC) consisting of eight Regional Fishery Management Council (RFMC) chairs, vice chairs, and executive directors and its subcommittees from May 23 to May 25, 2023. The intent of this meeting is to discuss issues of relevance to the Councils and NMFS, including issues related to the implementation of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSA), other topics of concern to the RFMC, and decisions and follow-up activities.

DATES: The meeting will be held Tuesday, May 23, 2023 to Thursday, May 25, 2023. Registration for the meeting will be 1 p.m.–5 p.m., EDT on Monday, May 22, 2023. The meeting will begin at 9 a.m., EDT on Tuesday, May 23, 2023, and recess at 5:15 p.m. or when business is complete. The meeting will reconvene at 9 a.m., EDT on Wednesday, May 24, 2023, and recess at 5 p.m. or when business is complete. The meeting will reconvene on the final day at 9 a.m., EDT on Thursday, May 25, 2023, and adjourn by 12:30 p.m. or when business is complete.

ADDRESSES:

Meeting address: The meeting will take place at the Marriott Beachside Hotel, 3841 North Roosevelt Boulevard, Key West, FL 33040; telephone: (305) 296–8100. This meeting will also be broadcast via webinar/phone. Connection details and public comment instructions will be available at *http://www.fisherycouncils.org/ccc-meetings/may-2023.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and 2007 Reauthorization Act (MSRA) established the CCC by amending section 302 (16 U.S.C. 1852) of the MSA. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the MSA, or their proxies, other Council members or staff. All sessions are open to the public and time will be set aside for public comments at the end of each day and after specific sessions at the discretion of the meeting Chair. The meeting Chair will announce public comment times and instructions to provide comment at the start of each meeting day. There will be opportunities for public comments to be provided in-person and remotely via webinar. Updates to this meeting, briefing materials, public comment instructions and additional information will be posted when available at *http://www.fisherycouncils.org/ccc-meetings/may-2023.*

Proposed Agenda

Tuesday, May 23, 2023; 9 a.m.–5:15 p.m., EDT

1. Welcome and Introductions, Adoption of Agenda
2. NOAA Fisheries Update and FY 23/24 Priorities
3. NOAA Fisheries Science Updates
4. Gulf Council Highlights
5. Revised Draft: National Recreational Saltwater Policy
6. Budget and 2024 Outlook
7. Update on the Inflation Reduction Act
8. Climate Change and Fisheries
9. Update on Anti-harassment Policies and Training Opportunities
10. Public Comment

—Adjourn for the day

Wednesday, May 24, 2023; 9 a.m.–5 p.m., EDT

11. America the Beautiful Initiative
12. International Fisheries Issues
13. 7th Scientific Coordination Subcommittee (SCS) Report
14. Presentation on National Standard 1 Policy Technical Memo and Draft Memo
15. Communications Subcommittee Report
16. Process for Establishing Fishing Regulations in Sanctuaries
17. Public Comment

—Adjourn for the day

Thursday, May 25, 2023; 9 a.m.–12:30 p.m., EDT

18. Legislative Outlook
19. Integration of the Endangered Species Act—Magnuson-Stevens Act
20. Marine Resource Education Program
21. CCC Workgroups/Subcommittees
22. 2024 CCC Meetings
23. Other Business and Wrap-Up

—Meeting Adjourns

The timing and order in which agenda items are addressed may change as required to effectively address the issues. The CCC will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

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

Dated: April 27, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–09304 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0030]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Shipbuilding Industrial Base Demographics Survey; OMB Control Number 0703–IDMS.

Type of Request: New.

Number of Respondents: 1,263.

Responses per Respondent: 1.

Annual Responses: 1,263.

Average Burden per Response: 4.81 hours.

Annual Burden Hours: 6,075.

Needs and Uses: The Shipbuilding Industrial Base Demographic Survey is necessary to ensure a complete data set is available to meet the intent of Executive Order No. 13985 and Section 1026 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, and provide actionable information on the Defense Industrial Base. The collected information will assist in drafting a biennial Report to Congress (RTC), as well as provide additional information and support Navy strategy for funding workforce development pilot programs and initiatives. This key demographic information will illustrate current trends, projected gaps in experience and age, and highlight additional areas of focus based on current workforce and skilled trade employment figures. The respondents for this survey are the suppliers in the shipbuilding industrial base (SIB). This includes private companies and industry organizations but is not inclusive of government shipyards and government organizations such as Naval Surface Warfare Centers. Suppliers in the SIB are key information holders on skilled workforce and are the only entities capable of answering the Congressional requirements set forth in the FY21 NDAA. Through the information provided, suppliers in the SIB will contribute to improving workforce enrollment and retention, assisting with targeting strategies and new programs aimed at expanding the skilled workforce available.

Affected Public: Business or other for-profit.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 27, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–09303 Filed 5–1–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; State Tribal Education Partnership Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for the State Tribal Education Partnership grant program (STEP), Assistance Listing Number (ALN) 84.415A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: May 2, 2023.

Deadline for Notice of Intent to Apply: June 1, 2023.

Date of Pre-Application Webinar: May 17, 2023.

Deadline for Transmittal of Applications: July 3, 2023.

Deadline for Intergovernmental Review: August 30, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Donna Bussell, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W239, Washington, DC 20202–6335. Telephone: 202–987–0204. Email: *donna.bussell@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of STEP are to: (1) promote Tribal self-determination in education; (2) improve the academic achievement of Indian children and youth; and (3) promote the coordination and collaboration of Tribal educational agencies (TEAs), as defined in this notice, with State educational agencies (SEAs) and local educational agencies (LEAs) to meet the unique education and culturally related academic needs of Indian students.

Background: STEP is authorized under section 6132 of the Elementary and Secondary Education Act, as amended (ESEA). In this competition, the Department uses the priorities from section 6132 of the ESEA and from the Department's notice of final priorities, requirements, and definitions published elsewhere in this issue of the **Federal Register** (NFP). The priorities support the development of partnerships among TEAs, SEAs, and LEAs to promote the creation of new TEAs or expansion of early TEAs to improve identification of Native students in public education data and enhance Tribal consultation. STEP is one of many efforts across the Federal Government to strengthen the government-to-government relationships with Tribal Nations throughout the United States. Our intent for this competition is to award STEP grants to create new TEAs; increase collaboration among TEAs, SEAs, and LEAs; and build the capacity of TEAs to directly administer education programs, including formula grant programs under the ESEA, consistent with State law and under a written agreement among the parties.

Recognizing the importance of TEAs, the Department is creating opportunities where Tribal Nations can exert Tribal sovereignty in public education and advance long-term self-determination. The Department expects that TEA–SEA–LEA coordination will facilitate positive and meaningful systemic change and strengthen the ability of TEAs to maintain greater connections with their Native children in public schools. The requirement for a draft written agreement (DWA), as defined in this notice, helps to ensure that all relevant partners needed to achieve the project goals are included from the outset.

Further, a key priority of the Department is to strengthen community engagement to advance systemic change. This competition includes a competitive preference priority to encourage projects that bridge the purpose of STEP and the Secretary's cross-agency coordination priority to advance systemic change.

For example, applicants could propose projects that include a partnership among a TEA, SEA, and LEA aimed at improving the identification of Native students who may be eligible for an ESEA title VI Indian Education formula grant. By partnering with LEAs, a TEA may disclose a list of students who are Tribally enrolled or affiliated as descendants to the LEA, enabling the LEA to compare the list with student enrollment information and notify the parents regarding Indian education program opportunities without the LEA disclosing the identity of eligible students to a TEA. One such example is a California Tribe that built cross-agency partnerships among the LEA, TEA, a local institution of higher education, and other community partners. Through the work of a joint steering committee, all partners were able to build the capacity of the new TEA so it could successfully administer educational programs for its students. In addition to improving delivery of equitable supports for Indian children and youth, we believe a collaboration focused on better identification of Indian students will build TEA capacity to collect and analyze data and help advance Tribal self-determination in public education and is consistent with input received during Tribal consultation.

A TEA must submit a DWA (as defined in this notice) with an SEA, one or more LEAs, or both the SEA and a LEA with its application for funding. For the purposes of the DWA, a school funded by the Bureau of Indian Education (BIE) is considered an LEA. The agreement must document the commitment of the TEA, SEA, and LEA to work together and must include all required elements included in the definition of DWA. Letters of support from an SEA or LEA alone will not meet this requirement and will not be accepted.

In accordance with ESEA section 6132(c)(2), all grantees who are expanding early TEAs must train and support the SEA and LEA in areas related to Tribal history, language, and culture.

In accordance with the Department's commitment to engage in regular and meaningful consultation and collaboration with Indian Tribes (as defined in this notice), the Office of Elementary and Secondary Education's (OESE) Office of Indian Education (OIE) and the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities conducted two virtual Tribal Consultation sessions. The first, regarding the STEP program, was held on April 26, 2021, and the second, about general input on the Department's FY 2024 budget request, was held on June 30, 2022. A summary of the consultations can be found in the notice of proposed priorities, requirements, and definitions for this program published in the **Federal Register** on December 28, 2022 (87 FR 79824).

Priorities: This competition includes two absolute priorities and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priorities and Competitive Preference Priorities 1 and 2 are from the NFP. Competitive Preference Priority 3 is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3)we consider only applications that meet Absolute Priority 1 or Absolute Priority 2.

Note: The Department intends to create two funding slates—one for applicants that meet Absolute Priority 1 and another for applicants that meet Absolute Priority 2. As a result, the Department may fund applications out of the overall rank order, provided applications of sufficient quality are submitted, but the Department is not bound to do so. Each applicant must clearly identify the specific absolute priority that the proposed project addresses in the project abstract.

These priorities are:

Absolute Priority 1—Create a TEA.

To meet this priority, an applicant must be an Indian Tribe or Tribal organization approved by an Indian Tribe that is applying to create a TEA.

Absolute Priority 2—Expand Capacity of Early TEAs.

To meet this priority, an applicant must be an early TEA.

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets Competitive Preference Priority 1, an additional 3 points to an application that meets Competitive Preference Priority 2, and an additional 2 points to an application that meets Competitive Preference Priority 3. An application that meets Competitive Preference Priorities 1, 2, and 3 can be awarded a maximum of 10 priority points.

These priorities are:

Competitive Preference Priority 1—Improve Identification of Native Students for Title VI Indian Education Formula Grant Program (0 or 5 points).

To meet this priority, an applicant must propose to partner with an LEA to develop and maintain effective and culturally responsive methods to better identify, and support the identification of, Indian students who may be undercounted or under-identified as eligible for an ESEA title VI formula grant program consistent with section 6112 of the ESEA. This includes identifying Indian students who are not enrolled in a Tribal Nation but who have an affiliation with a Tribal Nation through being a descendant in the first or second degree from a Tribal Nation member as described in ESEA section 6151(3).

Note: The Family Educational Rights and Privacy Act (FERPA) does not permit an LEA to disclose personally identifiable information (PII) from students' education records to a TEA without parental consent unless the disclosure meets one of FERPA's exceptions to the general consent requirement. The most relevant exceptions to FERPA's general consent requirement that may apply if certain conditions are met are the ''school official,'' ''studies,'' and ''audit/evaluation'' exceptions. For further information on FERPA, contact the Department's Student Privacy Policy Office at *https://studentprivacy.ed.gov/.*

Competitive Preference Priority 2—New STEP Grantee (0 or 3 points).

To meet this priority, an applicant must be an early TEA or applying to create a TEA and must not have previously received a STEP award from the Department.

Competitive Preference Priority 3—Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change (0 or 2 points).

Projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students in one or more of the following priority areas:

(a) Coordinating efforts with Federal, State, or local agencies, or community-based organizations, that support students, to address one or more of the following:

(1) Energy.

(2) Homelessness.

(3) Transportation.

(4) Health, including physical health, mental health, and behavioral health and trauma.

(5) School diversity, including student and educator diversity.

(6) College readiness.

(7) Workforce development.

(8) Civic engagement.

(9) Technology.

(10) Public safety.

(11) Community violence prevention and intervention.

(12) Social services.

(13) Adult education and literacy.

(b) Conducting community needs and asset mapping to identify existing programs and initiatives that can be leveraged, and new programs and initiatives that need to be developed and implemented, to advance systemic change.

(c) Establishing cross-agency partnerships, or community-based partnerships with local nonprofit organizations, businesses, philanthropic organizations, or others, to meet family well-being needs.

(d) Identifying, documenting, and disseminating policies, strategies, and best practices on effective approaches to creating systemic change through cross-agency or community-based coordination and collaboration.

(e) Expanding or improving parent and family engagement.

Note: In addressing Competitive Preference Priority 3, an applicant must ensure the proposed activities function solely to promote cross-agency coordination and, consistent with the STEP statute, do not provide direct services to students.

Application Requirements: These application requirements are from section 6132(d) of the ESEA (20 U.S.C. 7452) and from the NFP. Specifically, application requirement 1 is from the NFP and application requirements 2 through 7 are from the ESEA. For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements.

Each application for funds must include the following:

(1) *Draft Written Agreement with Partners.*

An applicant must provide a Draft Written Agreement (DWA) with the appropriate SEA and/or LEA partner(s). For applicants creating a new TEA, a DWA is only required with an LEA. For applicants expanding capacity for an early TEA, a DWA with both an SEA and LEA is required.

(2) A statement describing the activities to be conducted, and the objectives to be achieved, under the grant.

(3) A description of the method to be used for evaluating the effectiveness of the activities for which assistance is sought and for determining whether such objectives are achieved.

(4) For TEA applicants, evidence of existing capacity as a TEA.

(5) Evidence that the eligible applicant has consulted with other education entities, if any, within the territorial jurisdiction of the applicant that will be affected by the activities to be conducted under the grant.

(6) A description of how the eligible applicant will consult with such other education entities in the operation and evaluation of the activities conducted under the grant.

(7) Evidence that there will be adequate resources provided under this program or from other sources to complete the activities for which assistance is sought.

Program Requirements: These program requirements are from section 6132(c) of the ESEA (20 U.S.C. 7452), section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638 or ISDEAA), and the NFP. Specifically, program requirements (a)(1) and (a)(2) are from the NFP, program requirement (a)(3) is from ISDEAA, and program requirements (b) and (c) are from the ESEA. For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, grantees must adhere to the following program requirements.

(a) For grantees under either absolute priority:

(1) *Hire Project Director within 60 Days.*

Grantees must hire a project director as soon as practicable, but no later than 60 days after the beginning of the performance period.

(2) *Final Written Agreement with Partners.*

Grantees must submit a final written agreement signed by all parties entering into the agreement within 120 days after receiving the grant award notification.

(3) *ISDEAA Statutory Hiring Preference.*

Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the ISDEAA (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(i) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

For purposes of this preference, an Indian is a is a member of any federally recognized Indian Tribe.

(b) For grantees under Absolute Priority 1, plan and develop a TEA.

(c) For grantees under Absolute Priority 2:

(1) Directly administer (as defined in this notice) education programs, including formula grant programs under ESEA, consistent with State law and under a written agreement between the parties. (ESEA section 6132(c)(2)(A))

(2) Build capacity to administer and coordinate such education programs, and to improve the relationship and coordination between the TEA and the SEA(s) and LEA(s) that educate students from the Tribe. (ESEA section 6132(c)(2)(B))

(3) Receive training and support from the SEA(s) and LEA(s), in areas such as data collection and analysis, grants management and monitoring, fiscal accountability, and other areas as needed. (ESEA section 6132(c)(2)(C))

(4) Train and support the SEA(s) and LEA(s) in areas related to Tribal history, language, and culture. (ESEA section 6132(c)(2)(D))

(5) Build on existing activities or resources rather than replacing other funds. (ESEA section 6132(c)(2)(E))

(6) Carry out other activities consistent with the purposes of the program. (ESEA section 6132(c)(2)(F))

Definitions: The definition of ''Indian Tribe'' is from section 6132 of the ESEA. The definition of ''relevant outcome'' is from 34 CFR 77.1. The definitions of

''draft written agreement,'' ''directly administer,'' ''early TEA,'' ''established TEA,'' ''final written agreement,'' ''new TEA,'' ''TEA,'' and ''Tribal consultation'' are from the NFP. The definition of ''underserved student'' is from the Supplemental Priorities.

The following definitions apply to this competition:

Directly administer means conducting, as the fiscal agent, SEA functions or LEA functions for education programs, including ESEA formula grant programs, consistent with State law and the FWA.

Draft written agreement (DWA) means an unsigned written agreement with an attached letter of support from each SEA or LEA partner indicating each has reviewed the project plan and will finalize the DWA into an FWA within 120 days of grant award notification. The DWA must include the following:

(1) The roles and responsibilities for each partner.

(2) An agreed-upon list of deliverables (Note: deliverables cannot be direct services to Indian students).

(3) Identification of at least one point of contact for each partner.

(4) A description of the resources each partner will contribute to the project (Note: resources do not need to be monetary or matching funds).

Early TEA means a TEA that meets one or two of the criteria in the definition of an established TEA.

Established TEA means a TEA that meets three or more of the following criteria:

(1) Has received a STEP grant in 2012 or subsequent years, or provides evidence of an existing prior relationship with an SEA or LEA.

(2) Has an existing Tribal education code.

(3) Has directly administered at least one education program within the past 5 years.

(4) Has administered at least one Federal, State, local, or private grant within the past 5 years.

(5) Has authorized teaching certifications.

Final written agreement (FWA) means a signed written agreement between the TEA and the SEA or LEA; the TEA and one or more LEAs; or the TEA and both an SEA and one or more LEAs, that documents the commitment and timeline of the agreeing partners to implement the terms and conditions specified in the DWA.

Indian Tribe means a federally recognized Tribe or a State-recognized Tribe.

New TEA means a Tribal entity that does not meet the definition of ''early TEA'' or ''established TEA.''

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Tribal consultation means that—

(1) The SEA or LEA provides Tribes the opportunity for input;

(2) The SEA or LEA considers and responds to the input from Tribal leaders or their officially designated proxies regarding an education program that affects the Tribal Nation or TEA; and

(3) The partner Tribal Nation provides written confirmation that the consultation was meaningful and in good faith.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education. This term also includes an agency, department, or instrumentality of more than one Tribe if the Tribes are in close geographic proximity or have cultural connections to each other and agree through joint Tribal government resolution to have a combined TEA.

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student who is a member of a federally recognized Indian Tribe.

(c) A disconnected youth.

(d) A technologically unconnected youth.

(e) A student experiencing homelessness or housing insecurity.

(f) A student performing significantly below grade level.

Program Authority: Section 6132 of the ESEA (20 U.S.C. 7452).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2.4 million.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 5–8.

Note: The Department is not bound by any estimates in this notice.

Project Period: For applications addressing Absolute Priority 1: Up to 36 months. For applications addressing Absolute Priority 2: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An Indian Tribe or Tribal organization approved by an Indian Tribe, or a TEA, including a consortium of TEAs. An Indian Tribe that receives funds from the BIE under section 1140 of the Education Amendments of 1978 (25 U.S.C. 2020) is not eligible to receive funds under this program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 6132 of the ESEA (20 U.S.C. 7452), funds under this section must be used to supplement, and not supplant, other Federal, State, and local programs that meet the needs of Tribal students.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* For the addresses for obtaining and submitting an

application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* The following funding restrictions in ESEA section 6132(e) (20 U.S.C. 7452(e)) apply: (a) An Indian Tribe may not receive funds under STEP if such Tribe receives funds under section 1140 of the Education Amendments of 1978 (20 U.S.C. 2020); and (2) no STEP funds may be used to provide direct services. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative. An application will not be disqualified if it exceeds the recommended page limit.

5. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for addressing each criterion and factor within each criterion is included in parentheses. The maximum score for these criteria is 100 points.

(a) *Quality of Project Design* (30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 10 points)

(2) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (up to 10 points)

(3) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources. (up to 10 points)

(b) *Quality of Project Services* (20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of project services of the proposed project, the Secretary considers the following factors:

(1) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points).

(2) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (up to 15 points)

(c) *Adequacy of Resources* (20 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (up to 5 points)

(2) The extent to which the budget is adequate to support the proposed project. (up to 10 points)

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (up to 5 points)

(d) *Quality of Management Plan* (20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(e) *Quality of Project Personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 1 point)

(2) The qualifications, including relevant training and experience, of the project director or principal investigator. (Up to 9 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to

submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* Grantees that apply under Absolute Priority 1 will report on measure (a). Grantees that apply under Absolute Priority 2 will report on measures (b), (c), and (d).

(a) The number of Tribes that create a TEA by the end of the grant period.

(b) The number of capacity-building activities offered by the TEA for the SEA or LEA (*e.g.,* trainings, technical assistance in areas related to Tribal history, language, or culture).

(c) The number of capacity-building activities offered by the SEA or LEA for the TEA (*e.g.,* trainings, technical assistance in developing TEA capacity to administer and coordinate education programs).

(d) The number of education programs directly administered by the grantees.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and,

if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

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

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

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–09200 Filed 5–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0033]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Formula Grant EASIE Electronic Application System for Indian Education

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 1, 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 Crystal Moore, (202) 453–5593.

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: Formula Grant EASIE Electronic Application System for Indian Education.

OMB Control Number: 1810–0021.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11,300.

Total Estimated Number of Annual Burden Hours: 6,725.

Abstract: This is a revision request for the Indian Parent Committee Approval form that is a part of the OMB approved 1810–0021 collection. The Indian Education Formula Grant (ALN 84.060A) program provides grants to local education agencies (LEAs), Indian Tribe(s), Indian organizations (IOs) or Indian community-based organizations (ICBOs) who create programs to meet the unique cultural, language, and educational needs of American Indian and Alaska Native students to ensure that all students meet the challenging State academic standards. The programs must be used to carry out a comprehensive program for Indian students and must supplement the regular school program.

The Indian Education Formula Grant requires the annual submission of the Electronic Application System for Indian Education (Formula Grant EASIE) through an electronic portal housed on Federally managed and secured servers (computers). The system is web-based and includes the entire applicant submission process. The Office of Indian Education (OIE) is submitting this request to update the Indian Parent Committee Approval form to include the submission of meeting minutes.

Dated: April 27, 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. 2023–09232 Filed 5–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Interim Guidance on Packaging, Transportation, Receipt, Management, Short-Term and Long-Term Storage of Elemental Mercury and Request for Comment

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Department of Energy (DOE) provides this Notice of Availability and Request for Comment on a revision to DOE's 2009 *U.S. Department of Energy Interim Guidance on Packaging, Receipt, Management, and Long-Term Storage of Elemental Mercury* (2009 Long-Term Storage Guidance) and *Guidance for Short-Term Storage of Elemental Mercury by Ore Processors* (May 2019) (2019 Short-Term Storage Guidance). DOE specifically seeks input from potentially affected States, pursuant to the Mercury Export Ban Act, as amended, and also invites the public, stakeholders, and other States to provide comments on this draft guidance document.

DATES: The 30-day public comment period begins on the date of publication of this Notice and ends on June 1, 2023. Comments may be received through one of the methods described in section C in **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please direct written comments via one of the following methods:

Email: Send comments to *Addemailaddress@em.doe.gov* . Please submit comments in MicrosoftTM Word, or PDF file format, and avoid the use of encryption.

U.S. Mail: Send comments to the following address: David Haught, U.S. Department of Energy, Office of Environmental Management, Office of Waste Disposal (EM–4.22), 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: David Haught at *Addemailaddress@em.doe.gov* or at U.S. Department of Energy, Office of Environmental Management, Office of Waste Disposal (EM–4.22), 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5000.

SUPPLEMENTARY INFORMATION:

A. Background

The *Mercury Export Ban Act of 2008* (Pub. L. 110–414) (MEBA of 2008) as amended by the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (Pub. L. 114–182) (Chemical Safety Act of 2016), established requirements pertaining to elemental mercury and certain mercury compounds. Those requirements are located in the *Toxic Substances Control Act* (TSCA) (Pub. L. 94–469) and the *Solid Waste Disposal Act of 1965* (Pub. L. 89–272), as amended by the *Resource Conservation and Recovery Act of 1976* (RCRA) (Pub. L. 94–580), and subsequent amendments. Among other things, MEBA of 2008, and the Chemical Safety Act of 2016, collectively referred to herein as MEBA, amended TSCA and RCRA to ban the export of elemental mercury and certain mercury compounds, as well to provide for long-term and interim (*i.e.,* short-term) management and storage of elemental mercury. Specifically, MEBA of 2008 required DOE to designate a facility or facilities for the long-term management and storage of elemental mercury (referred to herein as the Long-Term Elemental Mercury Storage Facility (LTEMSF)) and to issue guidance on recommended standards and procedures for receipt, management, and long-term storage of elemental mercury. 42 U.S.C. 6939(a)(1), (d)(1). The Chemical Safety Act of 2016 provided for interim onsite storage of elemental mercury for certain generators, while awaiting availability of the DOE-designated LTEMSF. 42 U.S.C. 6939f(g)(2)(D). It further required DOE to issue guidance on recommended standards and procedures for management and short-term onsite storage. 42 U.S.C. 6939f(g)(2)(E). DOE, after consultation with the U.S. Environmental Protection Agency (EPA) and appropriate State agencies in potentially affected States, issued the 2009 Long-Term Storage Guidance to establish standards and procedures for packaging, transportation, receipt, management, and long-term storage of elemental mercury at a DOE-designated facility or facilities, as mandated by MEBA of 2008. Subsequently, the Chemical Safety Act of 2016 amended MEBA of 2008 and provided for onsite interim storage of elemental mercury that is generated as a result of ore processing and/or related pollution control activities and is destined for DOE's LTEMSF. It required DOE to issue additional guidance for short-term management and storage of elemental mercury by the covered generators. Accordingly, DOE issued the 2019 Short-Term Storage Guidance to address this requirement. Both guidance documents were based on certain planning assumptions specific to those timeframes.

B. Revised Guidance Document

Neither MEBA of 2008 nor the Chemical Safety Act of 2016 mandate revisions to either the 2009 Long-Term Storage Guidance or 2019 Short-Term Storage Guidance documents; however, since their initial issuance, some key underlying assumptions have changed and this revision, which addresses both long-term and short-term storage, reflects those changes, as discussed below. Once finalized and issued, this guidance document will supersede the previously issued 2009 Long-Term Storage Guidance and 2019 Short-Term Storage Guidance. At that time, the previously issued guidance documents will be rescinded. This draft guidance document was developed by DOE after consultation with the EPA, as well as the U.S. Department of Transportation (DOT). Additionally, DOE is specifically seeking input from potentially affected States and will further consult with them, as necessary.

1. *Omission of Example Procedures:* DOE has determined that it is not appropriate to include example procedures in this guidance document, but rather to defer to the LTEMSF Operator(s) implementation of its RCRA permit and approved procedures, in conjunction with oversight from their regulator(s). The 2009 Long-Term Storage Guidance included standards and example procedures for receipt, management, and long-term storage of elemental mercury. These procedures, as presented in the various sections of that document, provided annotated outlines or templates of what was envisioned to be included in the LTEMSF procedures for all aspects of operation. In general, these templates described suggested processes used to meet the expectations of the applicable standards. However, the Operator(s) of the DOE-designated LTEMSF, whether a commercial or federal government RCRA-permitted treatment, storage and disposal facility (TSDF), will likely leverage existing hazardous waste procedures, as well as develop new procedures as required for critical operations specific to management of elemental mercury. These procedures must ensure compliance with the applicable federal regulations, as well as state and local regulations. New and/or revised procedures are expected to require review and approval by the regulator(s).

2. *Waste Container Contents:* The 2009 Long-Term Storage Guidance contained a key assumption that the elemental mercury accepted for storage in the DOE-designated LTEMSF would be at least 99.5 percent by volume (vol%) elemental mercury. DOE does not carry this assumption forward in the revision. Instead, DOE assumes the generators will comply with applicable RCRA hazardous waste treatment and packaging requirements for highly concentrated elemental mercury, prior to receipt at the DOE LTEMSF. DOE's interpretation of the term ''elemental mercury'' used in MEBA, *see, e.g.,* 42 U.S.C. 6939f(a), is that only elemental mercury that was generated in the U.S. and that meets one (or more) of the

following criteria is acceptable for storage in its LTEMSF: (1) U151 coded waste, (2) D009 coded waste generated as a result of Retorting of Mercury (RMERC) treatment technology, and/or (3) mercury that was previously treated to 99.5 vol% elemental mercury.[1]

Based on the expected elemental mercury generator sources and the related factors discussed below, this revised guidance does not assume any DOE-specified minimum purity for elemental mercury accepted for management and storage at the DOE-designated LTEMSF. Rather, it focuses on applicable RCRA and DOT regulations related to compatibility of the waste with the containers.

3. *Generators:* In general, elemental mercury generators can be grouped into three primary categories: (1) ore processors, (2) commercial recyclers, and (3) chlor-alkali plants. Generation of mercury by ore processors typically occurs due to retorting as part of their required pollution control activities and represents the majority of the potential projected receipts at a DOE-designated LTEMSF. Similarly, commercial recyclers use retorting to separate elemental mercury from certain waste media, as well as collect commercial/technical-grade elemental mercury from discarded components. Finally, the chlor-alkali plants generate elemental mercury during decommissioning of electrolytic cells that use commercial/technical-grade elemental mercury in the process. All of these generation sources are expected to produce relatively pure elemental mercury waste streams; however, each must be evaluated on a case-by-case basis by the LTEMSF Operator(s), in consultation with appropriate regulators, to determine they meet one of the three criteria set forth above for acceptability.

4. *Containers and Compatibility:* The principal objective regarding the containers accepted for storage in the DOE-designated LTEMSF is that they are lined with, or made of, materials that will not react with and are compatible with the hazardous waste to be stored and do not pose a risk of accelerated corrosion and container failure over time (40 CFR 264/265.172). Currently, there are two primary containers of interest, which are in common commercial use for packaging, transportation, and storage of elemental mercury, that meet the applicable DOT regulations in 49 CFR 173. These include a three-liter (3–L) flask, with a 35-kg capacity, and a one metric ton (1–MT) container. Both are constructed of mild steel and are unlined such that the contents are in direct contact with the container inside surfaces. Due to their prevalent use, these are the assumed predominant containers to be received at the DOE-designated LTEMSF.

Given the uncertain duration for elemental mercury storage, the requirement for compatible materials is particularly relevant and important to safe management of the inventory. The primary contaminants of concern are those that can exist as secondary phases floating on top of the elemental mercury (*i.e.,* as opposed to the trace amounts of very small particles of metals or amalgams that may be suspended in the elemental mercury). These could be solid phases of mercury salts, such as calomel (mercury chloride) and cinnabar (mercury sulfide), or aqueous phases of water, acid solutions, and chloride salt solutions. Any of these secondary phases of contaminants could eventually lead to failure of unlined containers made of mild steel. DOE will only accept elemental mercury that was generated in the U.S. and that meets one (or more) of the following criteria: (1) U151 coded waste, (2) D009 coded waste generated as a result of RMERC treatment technology, and/or (3) mercury that was previously treated to 99.5 vol% elemental mercury.

No secondary phases of contaminants, based on process knowledge developed in accordance with 40 CFR 262.11(d) or visual examination, as determined appropriate by the Operator(s) of the DOE-designated LTEMSF, in coordination with their regulators, including solid and liquid phases, are acceptable for receipt at the DOE-designated LTEMSF, ensuring compliance with compatibility requirements set forth in 40 CFR 264/265.172, and 49 CFR 173.24(c). Based on the operations that generate significant portions of the elemental mercury inventories that are anticipated to be transferred to the LTEMSF, process knowledge is expected to be acceptable for characterizing the container contents to the extent required to treat, store, or dispose of the waste. Periodic validation via analysis and/or visual examination will be performed in accordance with the applicable regulations, described in 40 CFR 264.13, in consultation with the Operator(s) of the DOE-designated LTEMSF, and in compliance with 40 CFR 268.7 to re-validate the basis for acceptable process knowledge.

5. *Onsite Short-Term Storage by Ore Processors:* Section 10(c) of the Chemical Safety Act of 2016 states that, if DOE is unable to accept elemental mercury for reasons beyond the control of the generator, ore processors who meet the applicable requirements specified therein ''may accumulate the mercury produced onsite that is destined for a facility designated by the Secretary [of Energy] under subsection (a) for more than 90 days without a permit issued under section 3005(c) of the *Solid Waste Disposal Act* (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of that Act (42 U.S.C. 6924(j)).'' 42 U.S.C. 6939f(g)(2)(D). Ore processors that elect to conduct onsite short-term storage of elemental mercury that is destined for the DOE-designated LTEMSF will be subject to all RCRA regulations applicable to generators accumulating hazardous waste on site, as set forth in 40 CFR 262.17, with the exception of the accumulation times, which are specifically exempted in the Chemical Safety Act of 2016.

As previously discussed, DOE has not yet designated the LTEMSF. Ore processors are the only generators granted exemption from the RCRA storage prohibitions and allowed to accumulate elemental mercury onsite beyond 90 days in non-permitted temporary storage. Based on the technologies used in the pollution control systems operated by the ore processors, the elemental mercury acceptable for short-term storage is typically generated via retorting (*i.e.,* RMERC). Accordingly, it is expected to exhibit a relatively high percent by volume of elemental mercury, although there is a potential for contaminants to be present as secondary phases in the containers. The revised guidance document includes changes to the 2019 Short-Term Storage Guidance by specifying the criteria for elemental mercury which DOE will accept and by adding emphasis to the requirements for compatible waste containers and compliance with the requirements of 40 CFR 264/265.172. The approach for ensuring compliance should be determined in consultation with and approval by the regulators for the affected ore processors.

C. Request for Comments

DOE specifically seeks comment from potentially affected states—Arkansas, Illinois, Nevada, Pennsylvania, Tennessee, Texas, and Utah—which are analyzed as candidate storage locations in DOE's 2022 Draft Supplemental Environmental Impact Statement (DOE/EIS–0423–S2D) and also invites the public, stakeholders, and other States to provide comments on this draft

[1] Elemental mercury that has previously been treated to 99.5 vol% elemental mercury will be accepted at the DOE facility. This is included to capture treatment that some generators have already undertaken in order to meet DOE's original 99.5 vol% criteria.

guidance document. DOE will accept comments via the methods prescribed above in the **ADDRESSES** section. The Department will consider all comments received during the public comment period and modify the guidance document as appropriate. Any necessary follow-up consultation with EPA or State agencies in potentially affected States will be conducted in accordance with MEBA, 42 U.S.C. 6939f(d)(1).

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on April 27, 2023, by Kristen G. Ellis, Acting Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, Office of Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 27, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09301 Filed 5–1–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2466–037]

Appalachian Power Company; Notice of Intent to Prepare an Environmental Assessment

On February 28, 2022, Appalachian Power Company (Appalachian) filed an application for a new major license for the 2.4-megawatt Niagara Hydroelectric Project (Niagara Project; FERC No. 2466). The Niagara Project is located on the Roanoke River, in Roanoke County, Virginia. The project is adjacent to and partially within the Blue Ridge Parkway.

In accordance with the Commission's regulations, on February 7, 2023, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare a draft and final Environmental Assessment (EA) on the application to relicense the Niagara Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues draft EA	November 2023.
Comments on draft EA	December 2023.
Commission issues final EA	April 2024.[1]

Any questions regarding this notice may be directed to Laurie Bauer at (202) 502–6519 or *laurie.bauer@ferc.gov.*

Dated: April 26, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09244 Filed 5–1–23; 8:45 am]

BILLING CODE 6717–01–P

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare a draft and final EA for the Niagara Project. Therefore, in accordance with CEQ's regulations, the final EA must be issued within 1 year of the issuance date of this notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–707–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel_LU Quarterly Update Filing June 1, 2023 to be effective 6/1/2023.
Filed Date: 4/25/23.
Accession Number: 20230425–5166.
Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: RP23–708–000.
Applicants: BP Canada Energy Marketing Corp., BP Energy Company.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of BP Energy Co., et al.
Filed Date: 4/25/23.
Accession Number: 20230425–5290.
Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: RP23–709–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates Filing—NRA Concord & Talen/XTO Name Change to be effective 5/1/2023.
Filed Date: 4/26/23.
Accession Number: 20230426–5085.
Comment Date: 5 p.m. ET 5/8/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP19–423–004.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: Petition to Amend Settlement of Tallgrass Interstate Gas Transmission, LLC.
Filed Date: 4/25/23.
Accession Number: 20230425–5325.
Comment Date: 5 p.m. ET 5/8/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://*

elibrary.ferc.gov/idmws/search/fercgensearch.asp) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09242 Filed 5–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2489–049]

Green Mountain Power Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2489–049.

c. *Date filed:* October 31, 2022.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Cavendish Hydroelectric Project (Cavendish Project or project).

f. *Location:* On the Black River, in the town of Cavendish, in Windsor County, Vermont. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Tedesco, Green Mountain Power Corporation, 2152 Post Road, Rutland, VT 05701; Phone at (802) 655–8753, or email at *John.Tedesco@greenmountainpower.com.*

i. *FERC Contact:* Adam Peer at (202) 502–8449, or *adam.peer@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Cavendish Hydroelectric Project (P–2489–049).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis at this time.

l. The existing Cavendish Project consists of: (1) a 3,000 foot-long, 10-acre impoundment with a gross storage capacity of 18.4-acre-feet at a normal water surface elevation of 884.13 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (2) a 111-foot-long concrete gravity dam that consists of: (a) a 90-foot-long by 25-foot-high north spillway section topped with a 6-foot-high inflatable flashboard system; and (b) a 21-foot-long by 6-foot-high south spillway section topped with 2.5-foot-high steel flashboards; (3) an 18-inch wide downstream fish passage chute located on the north side of the spillway; (4) a concrete intake structure equipped with a mechanically operated headgate, and a trash rack with 2-inch clear bar spacing; (5) a 178-foot-long concrete and rock tunnel that carries flows from the intake to a penstock; (6) a 6-foot-diameter, 1,090-foot-long steel penstock; (7) a 64-foot-long by 34-foot-wide powerhouse containing three turbine-generator units with a combined capacity of 1.44 megawatts; (8) a 100-foot-long transmission line that runs from the powerhouse to a substation within the project boundary; and (9) appurtenant facilities. The project creates a 1,570-foot-long bypassed reach of the Black River.

The current license requires Green Mountain Power Corporation to: (1) operate the project in run-of-river mode; (2) maintain the impoundment water level no lower than 6 inches below the crest of the flashboards; (3) release a continuous minimum flow of 10 cubic feet per second (cfs) to the bypassed reach; and (4) release downstream flows of at least 42 cfs from June 1 to September 30, at least 83 cfs from October 1 to March 31, and at least 332 cfs from April 1 to May 31 when refilling the impoundment after project maintenance or flashboard installation. If inflows are insufficient to meet the downstream flows during impoundment refill, Green Mountain Power Corporation is required to release 90 percent of instantaneous inflow through the turbines. The project generates about 4,864 megawatt-hours annually.

Green Mountain Power Corporation proposes to: (1) continue operating the project in run-of-river mode; (2) maintain a stable impoundment water level at the top of the flashboard crest; (3) continue releasing a continuous minimum flow of 10 cfs to the bypassed reach; and (4) release 90 percent of instantaneous inflow through the turbines at all times when refilling the impoundment.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC Online Support at *FERCOnllineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or

''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping—Document 1 for comments June 2023
Scoping Document 1 comments due—July 2023
Request Additional Information (if necessary)—August 2023
Issue Scoping Document 2 (if necessary)—September 2023
Issue Notice of Ready for Environmental Analysis—December 2023

Dated: April 26, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09245 Filed 5–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1703–000]

Stanton Battery Energy Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Stanton Battery Energy Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 16, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09243 Filed 5–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP16–454–000; CP16–454–003; CP16–455–000; CP16–455–002; CP20–481–000; CP16–116–000; CP16–116–001; CP16–116–002.	4–12–2023	FERC Staff.[1]
2. P–2100–134	4–12–2023	FERC Staff.[2]
3. CP16–454–000; CP16–454–003; CP16–455–000; CP16–455–002; CP20–481–000; CP16–116–000; CP16–116–001; CP16–116–002; P–2100–134.	4–12–2023	FERC Staff.[3]
4. CP16–454–000; CP16–455–000; CP20–481–000	4–13–2023	FERC Staff.[4]
Exempt:		
CP22–2–000	4–13–23	U.S. Congressman Cliff Bentz.

[1] Memo forwarding comments of Ben Jealous at the 3/29/23 Commissioner-Lead Roundtable on Environmental Justice and Equity in Infrastructure Permitting.
[2] Memo forwarding comments of Dr. Beth Rose Middleton Manning at the 3/29/23 Commissioner-Lead Roundtable on Environmental Justice and Equity in Infrastructure Permitting.
[3] Transcript of the 3/29/23 Commissioner-Lead Roundtable on Environmental Justice and Equity in Infrastructure Permitting.
[4] Emailed comments dated 4/13/23 from Daniel Brown.

Dated: April 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09246 Filed 5–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–133–000.
Applicants: Angelo Solar, LLC.
Description: Self-Certification of EG of Angelo Solar, LLC.
Filed Date: 4/24/23.
Accession Number: 20230424–5296.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: EG23–134–000.
Applicants: Shady Oaks Wind 2, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Shady Oaks Wind 2, LLC.
Filed Date: 4/26/23.
Accession Number: 20230426–5116,
Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: EG23–135–000.
Applicants: Shady Oaks Transco Interconnection, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Shady Oaks Transco Interconnection, LLC.
Filed Date: 4/26/23.
Accession Number: 20230426–5117.
Comment Date: 5 p.m. ET 5/17/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4051–005; ER14–1656–013.
Applicants: CSOLAR IV West, LLC, CSOLAR IV South, LLC.
Description: Notice of Change in Status of CSOLAR Development, LLC, et al.
Filed Date: 4/25/23.
Accession Number: 20230425–5330.
Comment Date: 5 p.m. ET 5/16/23.

Docket Numbers: ER16–700–007.
Applicants: CPV Towantic, LLC.
Description: Notice of Change in Status of CPV Towantic, LLC.
Filed Date: 4/24/23.
Accession Number: 20230424–5295.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER20–2452–005.
Applicants: Hamilton Liberty LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 4/26/23.
Accession Number: 20230426–5081.
Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER20–2453–006.
Applicants: Hamilton Patriot LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 4/26/23.
Accession Number: 20230426–5086.
Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER22–2481–001.
Applicants: Seven Cowboy Wind Project, LLC.
Description: Notice of Non-Material Change in Status of Seven Cowboy Wind Project, LLC.
Filed Date: 4/24/23.
Accession Number: 20230424–5298.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–175–002.
Applicants: Daggett Solar Power 3 LLC.
Description: Notice of Change in Status of Daggett Solar Power 3 LLC.
Filed Date: 4/25/23.
Accession Number: 20230425–5328.
Comment Date: 5 p.m. ET 5/16/23.

Docket Numbers: ER23–937–000.
Applicants: Chevelon Butte RE LLC.
Description: Supplement to January 26, 2023, Chevelon Butte RE LLC tariff filing.
Filed Date: 4/25/23.
Accession Number: 20230425–5314.
Comment Date: 5 p.m. ET 5/5/23.

Docket Numbers: ER23–1234–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Request to Defer Action on WMPA SA No. 6800; Queue No. AF2–325; Docket ER23–1234 to be effective 12/31/9998.
Filed Date: 4/26/23.
Accession Number: 20230426–5041.
Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1441–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to NSA, SA No. 6837; Queue No. AE1–104 in Docket No. ER23–1441 to be effective 5/22/2023.
Filed Date: 4/26/23.
Accession Number: 20230426–5055.
Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1711–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5989; Queue No. AF1–217 to be effective 6/24/2023.
Filed Date: 4/26/23.
Accession Number: 20230426–5009.
Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1712–000.
Applicants: American Electric Power Service Corporation, Ohio Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Electric Power Service

Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits update to Attachment 1 of ILDSA, SA No. 1336 (3/31/23) to be effective 4/1/2023.

Filed Date: 4/26/23.

Accession Number: 20230426–5046.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1713–000.

Applicants: Unitil Power Corp.

Description: Unitil Power Corp. submits Statement of all billing transactions under the Amended Unitil System Agreement for the period January 1, 2022 to December 31, 2022.

Filed Date: 4/25/23.

Accession Number: 20230425–5326.

Comment Date: 5 p.m. ET 5/16/23.

Docket Numbers: ER23–1714–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ICSA, SA No. 4218; Queue No. AA1–065 to be effective 3/13/2023.

Filed Date: 4/26/23.

Accession Number: 20230426–5094.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1715–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2900R20 KMEA NITSA NOA to be effective 4/1/2023.

Filed Date: 4/26/23.

Accession Number: 20230426–5103.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1716–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6867; Queue No. AD1–041/AE1–190/AE1–191 to be effective 6/26/2023.

Filed Date: 4/26/23.

Accession Number: 20230426–5105.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1717–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 345 to be effective 4/18/2023.

Filed Date: 4/26/23.

Accession Number: 20230426–5114.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1718–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: CCSF Missed Metered Points (WDT SA 275) to be effective 6/26/2023.

Filed Date: 4/26/23.

Accession Number: 20230426–5115.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1719–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Tariff Clean-Up of Evergy Missouri West—effective date 4/1/2021 to be effective 4/1/2021.

Filed Date: 4/26/23.

Accession Number: 20230426–5159.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: ER23–1720–000.

Applicants: Holtville BESS, LLC.

Description: Baseline eTariff Filing: Application for MBR, Waivers and Blanket Authority and Expedited Consideration to be effective 6/7/2023.

Filed Date: 4/26/23.

Accession Number: 20230426–5206.

Comment Date: 5 p.m. ET 5/17/23.

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: April 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09248 Filed 5–1–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2023–0228, FRL–10820–01–OLEM]

Draft National Strategy to Prevent Plastic Pollution: Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) has developed the *Draft National Strategy to Prevent Plastic Pollution* to reduce plastic waste and other post-consumer materials in waterways and oceans, as directed by Congress in section 301 of the Save Our Seas 2.0 Act. This Notice provides the public with an opportunity to share information and provide feedback on the draft strategy, which identifies actions where EPA can work collaboratively with stakeholders to prevent plastic pollution and reduce, reuse, collect, and capture plastic and other waste from land-based sources. EPA is seeking public comment from a broad array of stakeholders engaged in post-consumer materials management and infrastructure, including, but not limited to: state, tribal, territorial, and local governments; industry; researchers; academia; non-profit organizations; community groups; and international organizations. Public comments received will inform the Agency's efforts to finalize and implement the strategy and further work with stakeholders to implement the actions.

DATES: Comments must be received on or before June 16, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2023–0228. Comments submitted in response to this notice may be submitted through the following:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *https://www.epa.gov/dockets/commenting-epa-dockets.*

Instructions: All submissions received must include the Docket ID No. OLEM–2023–0228 for this notice. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the Request for Information process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, contact Tameka Taylor, telephone number 202–564–1510, Resource Conservation and Sustainability

Division, Office of Resource Conservation and Recovery, Office of Land and Emergency Management, Mail Code 5306T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20004; Email: *CircularPlastics@epa.gov.* For more information on this strategy and others developed as part of EPA's Series on Building a Circular Economy for All, please visit *https://www.epa.gov/circular-economy.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Response to this request for public comment is voluntary. Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2023–0228, at *https://www.regulations.gov/* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Responses to this request for public comment may be submitted by a single party or a team. Responses will only be accepted using Microsoft Word (.docx) or Adobe PDF (.pdf) file formats. The response document should contain the following:

- Two clearly delineated sections: (1) Cover page with company name and contact information; and (2) responses by topic and/or that address specific EPA questions.
- 1-inch margins (top, bottom, and sides).
- Times New Roman and 12-point font.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links to the referenced materials. Do not submit to EPA's docket at *https://www.regulations.gov/* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit: *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments. No confidential and/or business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this notice.

Privacy Note: All comments received from members of the public will be available for public viewing on *Regulations.gov*. In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

II. General Information

A. What is the purpose of this request for public comment?

Section 301 of the Save our Seas 2.0 Act charges EPA, in consultation with stakeholders, with developing a strategy to improve post-consumer materials management and infrastructure to reduce plastic waste and other post-consumer materials in waterways and oceans. The *Draft National Strategy to Prevent Plastic Pollution,* satisfies Congress' direction to EPA in section 301 of the Save Our Seas 2.0 Act to develop a strategy to improve post-consumer materials management and infrastructure for the purpose of reducing plastic waste and other post-consumer materials in waterways and oceans. EPA's *National Recycling Strategy* was published in November 2021 and primarily focuses on enhancing and advancing the national municipal solid waste recycling system, including plastic products in municipal solid waste. This strategy, the *Draft National Strategy to Prevent Plastic Pollution,* builds upon the *National Recycling Strategy* by focusing on actions to reduce, reuse, collect, and capture plastic waste.

The *Draft National Strategy to Prevent Plastic Pollution,* provides voluntary actions that can be implemented in the United States aimed at eliminating the release of plastic waste from land-based sources into the environment by 2040. This is a domestic strategy that identifies strategic objectives and voluntary actions where EPA can work collaboratively with U.S. stakeholders to prevent plastic pollution and reduce, reuse, collect, and capture plastic and other waste from land-based sources. The proposed actions under each objective create opportunities to shift from a linear approach in plastic materials management to a more circular system that is restorative or regenerative by design, enables resources to maintain their highest value for as long as possible, and aims for the elimination of waste. Sea-based sources are not in the scope of this strategy.

With input from stakeholders, EPA has identified three draft objectives for the strategy: (A) Reduce Pollution During Plastic Production; (B) Improve post-use materials management; and (C) Prevent trash and microplastics from entering waterways and remove escaped trash from the environment. The proposed actions under each objective support the United States' shift to a circular approach that is restorative or regenerative by design, enables resources to maintain their highest value for as long as possible, and aims to eliminate waste in the management of plastic products. EPA is seeking information about the objectives and voluntary actions identified in this draft strategy. Public comments will inform the Agency's efforts to finalize the strategy and further work with stakeholders to implement actions to reduce plastic waste and other post-consumer materials in waterways and oceans. This Notice follows in sequence, a previous public comment period for the EPA's *National Recycling Strategy,* which collectively satisfies the charge given to EPA by Congress under the SOS 2.0 Act.

III. Request for Information

In November 2021, EPA held multiple stakeholder feedback sessions with federal agencies, states, territories, tribes, industry, and non-profit organizations to inform the development of this strategy. Between November 2021 and July 2022, EPA hosted virtual meetings across the country with interested stakeholders to inform the development of new grant programs established by the Infrastructure Investment and Jobs Act, which further informed the development of this strategy. This Notice and any future notices aim to supplement stakeholder engagement sessions and, provide all interested individuals and organizations with the opportunity to offer valuable input on the voluntary actions identified in this strategy. In addition to receiving general feedback on the draft strategy, EPA is interested in receiving feedback on the following:

- Which actions are the most important and would have the greatest positive impact at the local, regional, national, and global level?
  - Which actions can best protect human health and environmental quality?

○ Which actions are most important to address environmental justice and climate change?

○ What are the key steps and milestones necessary to successfully implement the actions in the draft strategy?

• What are the most important roles and/or actions for federal agencies to lead?

• Is your organization willing to lead an action or collaborate with others to implement actions?

○ What factors would your organization consider when determining whether to lead an action?

• What are potential unintended consequences of the proposed actions that could impact communities considered overburdened or vulnerable, such as shifts in production or management methods?

• What are the key metrics and indicators that EPA should use to measure progress in reducing plastic and other waste in waterways and oceans?

• What criteria should processes other than mechanical recycling meet to be considered ''recycling activities'' (*e.g.,* ''plastics-to-plastics outputs are 'recycling' if the output is a product that could again be recycled into another product or to extent that it can achieve viable feedstock for new plastic materials'')? How should health and environmental impacts be considered in these criteria?

• Are there other actions that should be included in this strategy?

○ Should EPA expand the scope of the strategy to include sea-based sources?

○ Should specific types of plastic products be targeted for reduction or reuse in this strategy?

• Do you have any additional information or recommendations for EPA regarding these or other proposed actions in this draft strategy?

IV. Disclaimer and Important Note

This request for public comment is issued solely for information, research and planning purposes and does not constitute a Request for Proposals (RFP) or a Request for Applications (RFA). Responding to this notice will not give any advantage to or preclude any organization or individual in any subsequently issued solicitation, RFP, or RFA. Any future development activities related to this activity will be announced separately. This notice does not represent any award commitment on the part of the U.S. Government, nor does it obligate the Government to pay for costs incurred in the preparation and submission of any responses.

Dated: April 24, 2023.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2023–08970 Filed 5–1–23; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—proposed revision of the Employer Information Report (EEO–1) Component 1.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for a three-year PRA approval of revisions to Component 1 of the Employer Information Report (EEO–1). This PRA submission for the EEO–1 Component 1 does not change the types of demographic workforce data historically collected by the EEO–1 (*i.e.,* employee data by job category and sex and race or ethnicity). Rather, as part of this routine three-year clearance for Component 1 under the PRA, the EEOC seeks OMB approval of measures that streamline and modernize how the current EEO–1 Component 1 workforce demographic data are collected from employers.

DATES: Written comments on this notice must be submitted on or before June 1, 2023.

ADDRESSES: Written comments should be sent within 30 days of publication of this final notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Paul Guerino, Director, Data Development and Information Products Division, Office of Enterprise Data and Analytics (OEDA), Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507; (202) 921–2928 (voice), (800) 669–6820 (TTY) or email at *OEDA@eeoc.gov.* Requests for this notice in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs (OCLA) at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: A notice that the EEOC would be submitting this request was published in the **Federal Register** on November 10, 2022, allowing for a 60-day public comment period which ended on January 9, 2023.[1] Two comments were received from the public.

I. Background

A. The EEO–1 Component 1 Report[2]

Since 1966, the EEOC has required eligible employers to submit workforce demographic data (EEO–1 Component 1) on an annual basis. All private employers that are covered by Title VII of the Civil Rights Act of 1964, as amended (Title VII),[3] and that have 100 or more employees are required to file the workforce demographic data. In addition, Office of Federal Contract Compliance Programs (OFCCP) regulations require certain federal contractors to file the EEO–1 Component 1 if they have 50 or more employees and are not exempt as provided for by 41 CFR 60–1.5.

B. The 60-Day Notice: Request for Three-Year PRA Approval of Revisions to the EEO–1 Component 1

Pursuant to the PRA and OMB regulations found at 5 CFR 1320.8(d)(1), the Commission published a Notice in the **Federal Register** on November 10, 2022 soliciting public comments during a 60-day period (''60-day Notice'') on its intention to seek three-year OMB approval of revisions to the currently approved EEO–1 Component 1. In its 60-day Notice, the EEOC sought to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

---

[1] *See* Notice of Information Collection 87 FR 67907 (Nov. 10, 2022) at *https://www.federalregister.gov/documents/2022/11/10/2022-24518/agency-information-collection-activities-existing-collection.*

[2] Component 1 of the EEO–1 refers to the demographic data the EEOC has collected since 1966. The EEOC called its historic, first-time collection of pay data from certain private employers and federal contractors Component 2 of the EEO–1. The Component 2 collection was completed in February 2020. On July 28, 2022, the National Academies of Sciences, Engineering, and Medicine (NASEM) issued a Consensus Study Report evaluating the Component 2 pay data collection and providing recommendations for future data collections. The EEOC is carefully evaluating NASEM's recommendations as they relate to the EEO–1 Component 1 data collection and may request modification of the EEO–1 Component 1 collection in the future. The Consensus Report is available at *https://nap.nationalacademies.org/catalog/26581/evaluation-of-compensation-data-collected-through-the-eeo-1-form.*

[3] 42 U.S.C. 2000e, *et seq.*

Commission's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including 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). The 60-day Notice comment period ended on January 9, 2023.

As discussed in the 2019 and 2020 **Federal Register** Notices associated with the agency's previous request for clearance of Component 1,[4] the EEOC created the Office of Enterprise Data and Analytics (OEDA) in May 2018 with the goal of creating a 21st century data and analytics organization at the agency. Since its creation, OEDA, which administers the agency's EEO data collections, including the EEO–1 Component 1, has undertaken several efforts to modernize the collections and improve the quality of data collected. OEDA has also streamlined functions, such as providing additional self-service options, resource materials, and an online support message center. As part of these ongoing modernization efforts, OEDA identified additional burden-reducing measures to streamline how the current EEO–1 Component 1 workforce demographic data are collected from employers. This request for clearance under the PRA includes changes that make the EEO–1 Component 1 filing process more user-friendly and less burdensome.

Beginning with the 2022 EEO–1 Component 1 data collection, multi-establishment employers will no longer be required to file a separate ''type'' of establishment report based on the size of an individual non-headquarters establishment (*i.e.,* establishments with 50 or more employees or establishments with fewer than 50 employees). Rather, in place of the former ''Type 4'' and ''Type 8'' establishment reports and the former ''Type 6'' establishment list report, there will be a newly named ''Establishment-Level Report.''[5] All multi-establishment employers will use the ''Establishment-Level Report'' to submit establishment-level employee demographic data for each of their non-headquarters establishment(s) regardless of size. With this change, a multi-establishment employer will no longer have to take the additional step of counting employees in each establishment to determine whether to file a ''Type 4'' or ''Type 8'' establishment report. Multi-establishment employers will still be required to submit a ''Headquarters Report'' (formerly referred to as a ''Type 3'' report) and a ''Consolidated Report'' (formerly referred to as a ''Type 2'' report). However, each ''Consolidated Report'' for every multi-establishment employer will be auto-populated and auto-generated with data from their ''Headquarters Report'' and ''Establishment-Level Report(s)'' within the EEOC's electronic, web-based *EEO–1 Component 1 Online Filing System* (OFS).[6] A single-establishment employer is still required to submit only one report, a ''Single-Establishment Employer Report''[7] (formerly referred to as a ''Type 1'' single establishment report).

II. The Public Comments on the 60-day Notice

The 60-day Notice was published in the **Federal Register** on November 10, 2022.[8] The EEOC received two comments during the public comment period, both of which were published on the *www.regulations.gov* website.[9] The first comment consisted of a brief statement of support for the EEOC's proposal to create a single type of establishment-level report.[10] The second comment was a letter submitted by a non-profit association of employers hereinafter referred to as ''the employer association.''[11]

The employer association stated at the outset that the EEO–1 Component 1's ''structure, content, and filing options have worked well over the years and, as a general matter, [the employer association] supports the continuation of the current structure.'' Although the employer association stated that it ''supports renewal of Component 1 and the revisions proposed by the EEOC'' and ''believes that the burdens imposed by the data collection requirement are justified,'' it stated that the EEOC's burden estimate is ''too low.'' Additionally, the employer association supported the consolidation of the ''Type 4'' and ''Type 8'' establishment reports into a single establishment-level report as well as the proposed changes to the names of the EEO–1 Component 1 report types.[12] However, the employer association believes the EEOC should have sought stakeholder input and approval before discontinuing the option to use a ''Type 6'' establishment list report for establishments with fewer than 50 employees and recommends that ''the EEOC incorporate into its burden estimates the number of locations covered by Type 6 Establishment Lists.''

III. Commission Decisions and Final EEOC Proposals to OMB

The EEOC Will Seek Three-Year Approval of Revisions to the Currently Approved Component 1 of the EEO–1 Employer Information Report

After evaluating the two comments received from the public during the 60-day Notice, the Commission has decided it will seek a three-year approval by OMB of revisions to EEO–1 Component 1 for reporting years 2022, 2023, and 2024, as described in this Notice. Based on data trends over the last three EEO–1 Component 1 data collection reporting years (*i.e.,* 2019,

[4] *See* Notice of Information Collection 84 FR 48138, 48139 (Sept. 12, 2019) at *https://www.govinfo.gov/content/pkg/FR-2019-09-12/pdf/2019-19767.pdf* and Notice of Information Collection 85 FR 16348, 16341 (Mar. 23, 2020) at *https://www.govinfo.gov/content/pkg/FR-2020-03-23/pdf/2020-06008.pdf.*

[5] The ''Type 4'' report contained establishment-level employee demographic data at a non-headquarters establishment with 50 or more employees. The ''Type 8'' report contained establishment-level employee demographic data at a non-headquarters establishment with fewer than 50 employees. The ''Type 6'' establishment list report contained the name and address of *each* non-headquarters establishment with fewer than 50 employees, as well as the total number of employees at each such establishment. A multi-establishment employer choosing the option to submit a ''Type 6'' establishment list report, instead of a ''Type 8'' report, was required to *manually* enter employee demographic data by job category and sex and race or ethnicity into the accompanying ''Type 2'' consolidated report for every employee of every establishment included on the ''Type 6'' establishment list report.

[6] With the discontinuation of the option to use a ''Type 6'' establishment list report, a ''Consolidated Report'' can be auto-populated and auto-generated with data from a multi-establishment employer's ''Headquarters Report'' and ''Establishment-Level Report(s)'' within the EEOC's electronic, web-based *EEO–1 Component 1 Online Filing System* (OFS).

[7] This was referred to as a ''Single-Establishment Filer Report'' in the 60-day Notice published on November 10, 2022 in the **Federal Register**.

[8] Available at *https://www.federalregister.gov/documents/2022/11/10/2022-24518/agency-information-collection-activities-existing-collection.*

[9] Available at *https://www.regulations.gov/docket/EEOC-2022-0005.*

[10] Available at *https://www.regulations.gov/comment/EEOC-2022-0005-0002.*

[11] Available at *https://www.regulations.gov/comment/EEOC-2022-0005-0003.*

[12] Beginning with the 2022 EEO–1 Component 1 data collection, the EEOC is renaming the reports submitted by filers. The naming convention for EEO–1 Component 1 reports will no longer include the word ''Type'' or a specific number corresponding to ''Type.''

2020, and 2021), as well as the EEOC's ongoing updates to the EEO–1 Component 1 frame (*i.e.,* filer roster/list or employer roster/list), the EEOC believes the total number of filers submitting at least one report type may increase to 110,000 for reporting years 2022 through 2024. Table 1 below in the *Formal Paperwork Reduction Act Statement* section provides a breakdown of the estimated number of reports by report type that will be submitted by the estimated 110,000 filers. Accordingly, the EEOC is calculating the burden estimates in this Notice based on the revised estimate of the number of filers set forth below in Table 1.

After reviewing the comment submitted by the employer association referenced above, the EEOC believes the commenter has misinterpreted the burden estimates provided in the 60-day Notice. The employer association objects to what it characterizes as the EEOC's estimate that ''completing *all* Establishment-Level Reports will take an average of 2.5 hours.'' (Emphasis added.) As Table 1 below shows, the EEOC instead estimates that *each* ''Establishment-Level Report'' will take on average 150 minutes (2.5 hours) to complete. Thus, the employer association correctly notes that some employers may spend ''dozens of hours or more on Component 1 compliance'' depending on the number of ''Establishment-Level Report(s)'' filed by a particular employer. Even with this, the Commission believes that the burden estimates provided in the 60-day Notice generally *overestimate* the burden on employers with the largest numbers of establishments. This is because such employers are much more likely to be using a Human Resource Information System (HRIS) [13] which can automatically generate their headquarters reports and establishment reports into a single data file upload. While large multi-establishment employers tend to utilize the data file upload feature, which is much more efficient, the EEOC did not assume this in its burden calculations.

Although the EEOC is not changing the ''average reporting time'' or ''aggregate reporting time'' associated with each report, the agency has clarified the discussion of the reporting times below in the *Formal Paperwork Reduction Act Statement* section. In the 60-day Notice, the EEOC stated an ''aggregate reporting time'' of 5,150,488 hours for multi-establishment employers submitting ''Establishment-Level Reports.'' Upon further review, this figure could be confusing to members of the public given that multi-establishment employers must also submit ''Consolidated Reports'' and ''Headquarters Reports.'' As originally written, the 5,150,488 figure referred to the estimated number of hours associated with ''Establishment-Level Reports'' only. However, given the reference to ''aggregate reporting time,'' the EEOC has clarified that when accounting for the ''aggregate reporting time'' for EEO–1 Component 1 multi-establishment employers to complete a ''Consolidated Report'' (0 hours) and a ''Headquarters Report'' (54,786 hours), the total aggregate reporting time for such filers is 5,205,274 hours.

With respect to the employer association's comment regarding the ''Type 6'' establishment list report, the EEOC maintains that the burden estimates already account for the discontinuation of the ''Type 6'' option. The 2,060,195 ''Establishment-Level Reports'' that the Commission expects to receive is extrapolated from the total of previous years' ''Type 4'' and ''Type 8'' establishment reports, combined with the number of locations previously included on ''Type 6'' reports (which the commenter correctly notes will now each require an ''Establishment-Level Report''). The burden estimates are further expanded to account for the anticipated increase in the number of filers.

Furthermore, the Commission does not agree with the commenter's assertion that replacing the ''Type 6'' establishment list report with an ''Establishment-Level Report'' is ''by definition more burdensome and costly.'' In the past, a multi-establishment employer that chose to submit a ''Type 6'' report (instead of a ''Type 8'' report for each non-headquarters establishment with fewer than 50 employees) was required to provide the name and address of *each* such establishment, as well as the total number of employees at each establishment as part of this report. A multi-establishment employer choosing this option would then be required to *manually* enter employee demographic data by job category and sex and race or ethnicity into the accompanying ''Type 2'' consolidated report for every employee of every establishment included on the ''Type 6'' establishment list report. As detailed in the EEOC's Information Collection Review (ICR) package for reporting years 2019, 2020, and 2021, there was a higher burden associated with the ''Type 6'' report compared to the ''Type 8'' report for this reason. For the ''Type 6'' report, the average estimated reporting time was 480 minutes versus 180 minutes for the ''Type 8'' report.

With the discontinuation of the option to use a ''Type 6'' establishment list report instead of a ''Type 8'' report for non-headquarters establishments with fewer than 50 employees, a ''Consolidated Report'' can be auto-populated and auto-generated with data from a multi-establishment employer's ''Headquarters Report'' and ''Establishment-Level Report(s)'' within the EEOC's electronic, web-based *EEO–1 Component 1 Online Filing System* (OFS). Further, as previously noted, employers with multiple establishments are likely already using HRIS software to generate their reports, in which case providing demographics at the establishment level for each location can be performed in an automated fashion.

IV. Formal Paperwork Reduction Act Statement

A. Overview of Information Collection

Collection Title: Employer Information Report (EEO–1) Component 1.

OMB Number: 3046–0049.

Frequency of Report: Annual.

Type of Respondent: Private employers with 100 or more employees and federal contractors that have 50 or more employees and meet certain criteria.

Description of Affected Public: Private employers with 100 or more employees and federal contractors that have 50 or more employees and meet certain criteria.

Reporting Hours: 5,238,467 hours per annual collection.

Respondent Burden Hour Cost: $273,137,678.30 per annual collection.[14]

Federal Cost: $3,892,230.00 per annual collection.[15]

[13] For example, during the 2021 EEO–1 Component 1 reporting cycle, 78% of filers with 100 or more establishments submitted their demographic workforce data via the EEOC's data file upload function as opposed to manually entering their data by establishment into the *EEO–1 Component 1 Online Filing System* (OFS).

[14] This estimate is based on the most recent median pay data from the U.S. Bureau of Labor Statistics (BLS). The EEOC estimated that a computer network specialist would account for 60% of the estimated hourly wage; a database administrator and architect would account for 20%; an HR specialist would account for 10%; legal counsel would account for 5%; and a CEO would account for 5%, yielding a total estimated hourly wage of $34.87. *See* U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, https://www.bls.gov/ooh/.* Wages cited are median hourly wages. The ''respondent burden hour cost'' has increased slightly from the 60-day Notice because one of the input wages listed above (*i.e.,* database administrator and architect) was updated by BLS after the 60-day Notice was published.

[15] The ''federal cost'' has decreased slightly (*i.e.,* by $221,158.50) from the 60-day Notice because of

Number of Filers: 110,000 per annual collection.[16]

Number of Responses: 2,235,938 reports per annual collection.[17]

Number of Forms: 1.

Form Number: EEOC Standard Form 100 (SF 100).

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964 (Title VII) requires employers to make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order.[18] Pursuant to this statutory authority, the EEOC in 1966 issued a regulation requiring certain employers to file executed copies of the Employer Information Report (EEO–1) and instructed employers to report employee data by job category and by sex and race or ethnicity.[19] Pursuant to Executive Order 11246,[20] the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, in 1978 issued its regulation describing the EEO–1 as a report ''promulgated jointly with the Equal Employment Opportunity Commission'' and requiring certain contractors to submit ''complete and accurate reports'' annually.[21] Under these authorities, private employers with 100 or more employees and federal contractors that have 50 or more employees and meet certain criteria are required to report annually the number of individuals they employ by job category [22] and by sex and race or ethnicity.[23] These data are currently collected electronically by the EEOC through a web-based data collection application (*i.e.,* portal) referred to as the *EEO–1 Component 1 Online Filing System* (OFS).[24] Employers must submit their data electronically to the web-based portal through either manual entry or the upload of a data file. The individual EEO–1 reports are confidential.[25] EEO–1 data are used by the EEOC to investigate charges of employment discrimination against employers in private industry and to publish periodic reports on workforce demographics.[26]

B. Burden Statement

The annual estimated burden for the prior EEO–1 Component 1 Information Collection Review (ICR) for reporting years 2019, 2020, and 2021 was 9,140,226 hours.[27] For the proposed package for reporting years 2022, 2023, and 2024, the EEOC is using the same methodology for calculating burden and considering the same factors as the agency did for the prior ICR. However, as detailed below, the EEOC's plan to use a single ''Establishment-Level Report'' and an auto-populated and auto-generated ''Consolidated Report,'' as well as the increasing usage by

the input of lower federal staffing costs for the EEOC's Office of Enterprise Data and Analytics (OEDA), which administers the EEO–1 Component 1 data collection.

[16] This estimate is based on the number of filers who were identified as being potentially eligible at the end of the 2019 and 2020 EEO–1 Component 1 data collections (approximately 90,000 filers) and at the end of the 2021 EEO–1 Component 1 data collection (approximately 98,000 filers). Based on the increases over the last three EEO–1 Component 1 data collection cycles, as well as the EEOC's ongoing updates to the frame (*i.e.,* filer roster/list or employer roster/list), the EEOC estimates an increase of 12,000 potentially eligible filers compared to the number of filers during the 2021 EEO–1 Component 1 data collection.

[17] In the EEO–1 Component 1 Information Collection Review (ICR) for reporting years 2019, 2020, and 2021, the term ''records'' was used interchangeably with the term ''reports'' to refer to the ''reports'' submitted by filers. Beginning with the ICR for reporting years 2022, 2023, and 2024, the EEOC will no longer use the term ''records'' to refer to ''reports'' submitted by filers. For the proposed EEO–1 Component 1 data collections for reporting years 2022, 2023, and 2024, ''reports'' refers to the following types of reports: a ''Single-Establishment Employer Report,'' a ''Consolidated Report,'' a ''Headquarters Report,'' and an ''Establishment-Level Report.''

[18] 42 U.S.C. 2000e–8(c).

[19] The EEOC's EEO–1 regulation is at 29 CFR part 1602 subpart B. § 1602.7 requires eligible employers to file ''. . . in conformity with the directions set forth in the form and accompanying instructions.'' The EEOC is responsible for obtaining OMB's PRA approval for the EEO–1 report.

[20] Exec. Order No. 11246, 30 FR 12319 (Sept. 24, 1965).

[21] 41 CFR 60–1.7(a). OFCCP obtains EEO–1 Component 1 reports for federal contractors and subcontractors (contractors) pursuant to its own legal authority under E.O. 11246 and its implementing regulations. *See id* at 60–1.7(a)(1). Because OFCCP obtains EEO–1 data for contractors under its own E.O. 11246 authority, some courts have ruled that the Title VII prohibition against disclosure does not apply to OFCCP's collection of EEO–1 data. *See, e.g., United Techs. Corp.* v. *Marshall,* 464 F. Supp. 845, 851–52 (D. Conn. 1979); *Sears Roebuck & Co.* v. *Gen. Servs. Admin.,* 509 F.2d 527, 529 (D.C. Cir. 1974). Accordingly, the EEO–1 Component 1 data of federal contractors received by OFCCP may be subject to potential disclosure by OFCCP under the Freedom of Information Act (FOIA), although FOIA exemptions may prevent disclosure. For more information, see the Department of Labor's FOIA regulations at 41 CFR part 70 and frequently asked questions (Freedom of Information Act (FOIA) Frequently Asked Questions | U.S. Department of Labor (*dol.gov*)).

[22] The 10 job categories are: Executive/Senior Level Officials and Managers; First/Mid-Level Officials and Managers; Professionals; Technicians; Sales Workers; Administrative Support Workers; Craft Workers; Operatives; Laborers and Helpers; and Service Workers.

[23] The EEO–1 uses federal race and ethnicity categories, which were adopted by the Commission in 2005 and implemented in 2007. The seven race/ethnicity categories are: *Hispanic or Latino*—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race. *White* (*Not Hispanic or Latino*)—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. *Black or African American* (*Not Hispanic or Latino*)—A person having origins in any of the black racial groups of Africa. *Native Hawaiian or Other Pacific Islander* (*Not Hispanic or Latino*)—A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands. *Asian* (*Not Hispanic or Latino*)—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. *American Indian or Alaska Native* (*Not Hispanic or Latino*)—A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment. *Two or More Races* (*Not Hispanic or Latino*)—All persons who identify with more than one of the above five races. OMB is in the process of reviewing and revising its standards for maintaining, collecting, and presenting federal data on race and ethnicity. *See https://www.whitehouse.gov/omb/briefing-room/2022/06/15/reviewing-and-revising-standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity/.* The EEOC will carefully consider the revision to the federal standards for collecting race and ethnicity data, which are expected by summer 2024, for use in future data collections.

[24] EEO–1 Component 1 filers may access the *EEO–1 Component 1 Online Filing System* (OFS) through the EEOC's dedicated EEO–1 Component 1 website at *www.eeocdata.org/eeo1.*

[25] All reports and any information from individual reports are subject to the confidentiality provisions of Section 709(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-8(e), as amended (Title VII) and may not be made public by the EEOC prior to the institution of any proceeding under Title VII involving the EEO–1 Component 1 data. Any EEOC employee who violates this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned. The confidentiality requirements allow the EEOC to publish only aggregated data, and only in a manner that does not identify any particular filer or reveal any individual employee's personal information. With respect to other federal agencies with a legitimate law enforcement purpose but without OFCCP's independent authority to collect EEO–1 data, the EEOC gives access to information collected under Title VII only if the agencies agree, by letter or memorandum of understanding, to comply with the confidentiality provisions of Title VII. In addition, section 709(d) (42 U.S.C. 2000e–8(d)) provides that the EEOC shall furnish upon request and without cost to state or local civil rights agencies information about employers in their jurisdiction on the condition that they not make it public prior to starting a proceeding under state or local law involving such information. The EEOC shares EEO–1 data with state and local Fair Employment Practices Agencies (FEPAs) pursuant to Worksharing Agreements that impose obligations on the contracted FEPA with respect to confidentiality, privacy, and data security. On a case-by-case basis, the EEOC may share EEO–1 data with a FEPA that does not have a Worksharing Agreement, but only if that FEPA agrees to comply with confidentiality, privacy, and data security obligations similar to those imposed on FEPAs with Worksharing Agreements.

[26] Any reports the EEOC publishes based on EEO–1 Component 1 data include only aggregated EEO–1 Component 1 data that protect the confidentiality of each employer's information, as well as the privacy of each employee's personal information.

[27] *See* Notice of Information Collection 84 FR 48,138 (Sept. 12, 2019) at *https://www.govinfo.gov/content/pkg/FR-2019-09-12/pdf/2019-19767.pdf* and Notice of Information Collection 85 FR 16,348 (Mar. 23, 2020) at *https://www.govinfo.gov/content/pkg/FR-2020-03-23/pdf/2020-06008.pdf.*

employers of the data file upload function, significantly reduced the annual estimated aggregate filer burden under the proposed package from 9,140,226 to 5,238,467 hours.

The methodology used in the 30-day Notice to calculate the burden for the collection of EEO–1 Component 1 data is to separate single-establishment and multi-establishment employers and calculate the burden by considering the following factors: (1) the type of filer (*i.e.,* single-establishment or multi-establishment employer); (2) the combination of report types submitted by the filer (*i.e.,* for single-establishment employers, the ''Single-Establishment Employer Report'' or, for multi-establishment employers, the ''Consolidated Report,'' ''Headquarters Report,'' and ''Establishment-Level Report(s)''); [28] and (3) the total number of reports employers will certify to complete their EEO–1 Component 1 submission.

Reporting time estimates for EEO–1 Component 1 filers are based on the most recently completed EEO–1 Component 1 collection cycle (*i.e.,* the 2021 EEO–1 Component 1 data collection).[29] At the end of the 2021 EEO–1 Component 1 data collection, there were a total of 92,025 filers and a total of 1,507,468 reports submitted.[30] Based on data trends over the last three EEO–1 Component 1 data collection reporting years (*i.e.,* 2019, 2020, and 2021),[31] as well as ongoing updates by the EEOC to the EEO–1 Component 1 frame (*i.e.,* filer roster/list or employer roster/list), the EEOC believes the total number of filers submitting at least one report may increase to 110,000. The EEOC further estimates single-establishment employers will continue to represent approximately 40% of EEO–1 Component 1 filers and will submit less than 2% of all reports, while multi-establishment employers will continue to represent approximately 60% of EEO–1 Component 1 filers and will submit more than 98% of all reports.

Based upon the anticipated 110,000 filers submitting EEO–1 Component 1 reports, the EEOC estimates these filers will submit a total of 2,235,938 reports annually for reporting years 2022, 2023, and 2024.[32] The EEOC estimates 44,257 single-establishment employers will submit a single ''Single-Establishment Employer Report,'' and it will take these filers 33,193 hours to do so. The EEOC estimates 65,743 multi-establishment employers will submit 2,191,681 reports. By definition, all EEO–1 Component 1 multi-establishment employers must submit, at a minimum, a ''Consolidated Report,'' a ''Headquarters Report,'' and at least one ''Establishment-Level Report.'' The total number of ''Establishment-Level Reports'' filed by EEO–1 Component 1 multi-establishment employers varies greatly, with the plurality of multi-establishment employers filing one establishment report,[33] and a small number of multi-establishment employers filing many reports. A small number of multi-establishment employers account for a large portion of overall ''Establishment-Level Reports'' submitted.[34]

Table 1 below outlines the number of reports, the average reporting time by report type, and the aggregate number of hours estimated to submit these reports. The aggregate reporting time for EEO–1 Component 1 filers by report type varies between a low of 33,193 hours for single-establishment employers submitting a ''Single-Establishment Employer Report,'' and a high of 5,205,274 hours for multi-establishment employers submitting ''Consolidated Reports,'' ''Headquarters Reports,'' and ''Establishment-Level Reports.'' When also accounting for the aggregate reporting time for EEO–1 Component 1 single-establishment employers to complete a ''Single-Establishment Employer Report'' (33,193 hours), the total aggregate reporting time for all EEO–1 Component 1 filers is 5,238,467 hours.

TABLE 1—PROJECTED ANNUAL BURDEN FOR EEO–1 COMPONENT 1 REPORTING YEARS 2022, 2023, 2024, BY REPORT TYPE AND REPORTING TIME

Type of report	Number of reports	Average reporting time (minutes)	Aggregate reporting time (hours)
Single-Establishment Employer Report [a]	44,257	45	33,193
Consolidated Report [b]	65,743	0	0
Headquarters Report [c]	65,743	50	54,786
Establishment-Level Report [d]	2,060,195	150	5,150,488
Total	2,235,938	.....	5,238,467

[a] A ''Single-Establishment Employer Report'' must be submitted by all single-establishment employers. A single-establishment employer is required to submit only one report. This report must contain demographic data for all the single-establishment employer's employees categorized by job category and sex and race or ethnicity.

[28] A single-establishment employer is required to submit only a ''Single-Establishment Employer Report.'' A multi-establishment employer is required to submit a summary ''Consolidated Report,'' a ''Headquarters Report,'' and a separate ''Establishment-Level Report'' for each non-headquarters establishment. The ''Consolidated Report'' is auto-populated and auto-generated for all multi-establishment employers within the EEOC's *EEO–1 Component 1 Online Filing System* (OFS) with data from their ''Headquarters Report'' and ''Establishment-Level Report(s).''

[29] The 2021 EEO–1 Component 1 data collection cycle opened on April 12, 2022 and ended on June 21, 2022.

[30] For the 2021 EEO–1 Component 1 data collection, these 1,507,468 reports were made up of the following types of reports: ''Type 1'' (now referred to as a ''Single-Establishment Employer Report''); ''Type 2'' (now referred to as a ''Consolidated Report''); ''Type 3'' (now referred to as a ''Headquarters Report''); and ''Type 4'' and ''Type 8'' (now referred to as ''Establishment-Level Report(s)'').

[31] The 2019 EEO–1 Component 1 data collection was delayed until 2021 due to the Coronavirus Disease 2019 (COVID–19) public health emergency. As a result, the 2019 and 2020 EEO–1 Component 1 data collections were collected concurrently in 2021. *See https://www.federalregister.gov/documents/2020/05/08/2020-09876/delay-in-opening-of-2019-eeo-1-component-1-and-2020-eeo-3-and-2020-eeo-5-data-collections-due-to-the.*

[32] This total includes the 65,743 consolidated reports submitted annually by multi-establishment employers that are auto-populated and auto-generated by the *EEO–1 Component 1 Online Filing System* (OFS). While these reports contribute to the total report count, they have no associated burden.

[33] For the 2021 EEO–1 Component 1 data collection, the modal (*i.e.,* most common) number of reports submitted by multi-establishment employers was three reports: one headquarters report, one establishment report, and one consolidated report. The median number of reports submitted by multi-establishment employers was eight reports: one headquarters report, six establishment reports, and one consolidated report.

[34] For example, in the 2021 EEO–1 Component 1 data collection, there were individual multi-establishment employers whose submissions included thousands of reports for their non-headquarters establishments.

[b] A ''Consolidated Report'' is required for all multi-establishment employers. A ''Consolidated Report'' must contain demographic data for all the multi-establishment employer's employees (*i.e.,* employees at headquarters and all establishments), categorized by job category and sex and race or ethnicity. The ''Consolidated Report'' is auto-populated and auto-generated within the EEOC's electronic web-based *EEO–1 Component 1 Online Filing System* (OFS) for all multi-establishment employers with data from their ''Headquarters Report'' and ''Establishment-Level Report(s).'' Therefore, there is no associated burden.

[c] A ''Headquarters Report'' must be submitted by all multi-establishment employers. The report must contain demographic data for all the multi-establishment employer's headquarters employees, categorized by job category and sex and race or ethnicity.

[d] An ''Establishment-Level Report'' must be submitted by all multi-establishment employers for each non-headquarters establishment. An ''Establishment-Level Report'' must contain establishment-level demographic data for all employees at each of the multi-establishment employer's non-headquarters establishments categorized by job category and sex and race or ethnicity. One ''Establishment-Level Report'' must be submitted for each non-headquarters establishment. For example, if a multi-establishment employer has 10 non-headquarters establishments, the multi-establishment employer must submit 10 ''Establishment-Level Reports.'' Beginning with the 2022 EEO–1 Component 1 data collection, multi-establishment employers will no longer be required to file a separate ''type'' of establishment report based on the size of an individual non-headquarters establishment (*i.e.,* establishments with 50 or more employees or establishments with fewer than 50 employees). Rather, a multi-establishment employer will submit an ''Establishment-Level Report'' to report establishment-level employee demographic data for each of its non-headquarters establishment(s) regardless of size.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated number of respondents that must file EEO–1 Component 1 data for the next three reporting years (*i.e.,* 2022, 2023, and 2024) is 110,000 filers each year. Each filer is required to respond to the EEO–1 Component 1 once annually. The burden estimate is based on data from prior administrations of the EEO–1 Component 1 data collection. The EEOC estimates the 110,000 filers will submit a total of 2,235,938 reports annually. About 40% of EEO–1 Component 1 filers (*i.e.,* 44,257 single-establishment employers) will submit one report (*i.e.,* a ''Single-Establishment Employer Report'') on a single establishment. It is estimated these single-establishment employers will take an average of 45 minutes per reporting year to complete their EEO–1 Component 1 report. About 60% of EEO–1 Component 1 filers (*i.e.,* 65,743 multi-establishment employers) will report data on multiple establishments. For each reporting year, all multi-establishment employers must submit a ''Consolidated Report,'' a ''Headquarters Report,'' and an ''Establishment-Level Report'' for each establishment, resulting in an estimated total of 2,191,681 reports submitted.[35] While the actual submission time for each single-establishment employer and multi-establishment employer varies, for purposes of this Notice the EEOC estimates that it will take a single-establishment employer 45 minutes and the modal (*i.e.,* most common) multi-establishment employer 200 minutes (*i.e.,* 3.33 hours) to complete their EEO–1 Component 1 report(s).[36]

An estimate of the total public burden (in hours) associated with the collection: The collection of EEO–1 Component 1 data for reporting years 2022, 2023, and 2024 is estimated to impose 5,238,467 annual burden hours for 2,235,938 EEO–1 Component 1 reports filed each reporting year.

Dated: April 24, 2023.

For the Commission.

Charlotte A. Burrows,

Chair.

[FR Doc. 2023–09216 Filed 5–1–23; 8:45 am]

BILLING CODE P

[35] This total includes the 65,743 ''Consolidated Reports'' submitted by multi-establishment employers, which are auto-populated and auto-generated by the *EEO–1 Component 1 Online Filing System* (OFS). While these reports contribute to the total report count, they have no associated burden.

[36] Burden for single-establishment employers is based on a single report. Burden for multi-establishment employers is cumulative and is based on the report type combination. The completion time for the ''Consolidated Report'' is 0 minutes since this report is auto-populated and auto-generated within the EEOC's electronic web-based *EEO–1 Component 1 Online Filing System* (OFS) for all multi-establishment employers with data from their ''Headquarters Report'' and ''Establishment-Level Report(s).'' The completion of the ''Headquarters Report'' adds 50 minutes to the burden, and the completion of each ''Establishment-Level Report'' adds 150 minutes to the burden. Given the modal (*i.e.,* most common) multi-establishment employer submitted one ''Consolidated Report,'' one ''Headquarters Report,'' and only one ''Establishment-Level Report,'' the modal multi-establishment employer will have a total burden of 200 minutes, or 3.33 hours (0 minutes for the ''Consolidated Report,'' 50 minutes for the ''Headquarters Report,'' and 150 minutes for the one ''Establishment-Level Report''). Please note that the ''modal'' multi-establishment employer referenced here is based on the number of reports submitted by multi-establishment employers during the EEOC's most recent EEO–1 Component 1 data collection (*i.e.,* 2021), which closed in summer 2022.

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the FDIC proposes to establish a new FDIC system of records titled FDIC–041, ''Personal Information Allowing Network Operations (PIANO).'' This system of records maintains information collected from individuals that interact with FDIC information technology resources, including FDIC employees, FDIC contractors, FDIC volunteers, FDIC interns, Federal and State financial regulator employees, financial institution employees, and other members of the public. FDIC collects and maintains the information necessary in this system of records to support and facilitate the approval, monitoring, and disabling of access by individuals that interact with FDIC information technology resources. We hereby publish this notice for comment on the proposed action.

DATES: This action will become effective on May 2, 2023. The routine uses in this action will become effective June 1, 2023, unless the FDIC makes changes based on comments received. Written comments should be submitted on or before June 1, 2023.

ADDRESSES: Interested parties are invited to submit written comments identified by Privacy Act Systems of Records (FDIC–041) by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the FDIC website.
- *Email: comments@fdic.gov.* Include ''Comments-SORN (FDIC–041)'' in the subject line of communication.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments-SORN (FDIC–041), Legal Division, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-*

publications/. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act (FOIA).

FOR FURTHER INFORMATION CONTACT: Shannon Dahn, Chief, Privacy Program, 703–516–5500, *privacy@fdic.gov.*

SUPPLEMENTARY INFORMATION: FDIC conducts much of its business electronically and must ensure that its information technology resources operate in a secure and proper manner, which includes controlling and monitoring access to its information technology resources to ensure that access is restricted to authorized individuals. Accordingly, FDIC collects and maintains information in this system of records to support and facilitate the approval, monitoring, and disabling of access for individuals that interact with FDIC information technology resources, which includes FDIC employees, FDIC contractors, FDIC volunteers, FDIC interns, Federal and State financial regulator employees, financial institution employees, and other members of the public. This newly established system will be included in FDIC's inventory of record systems.

SYSTEM NAME AND NUMBER:

Personal Information Allowing Network Operations, FDIC–041.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are centrally maintained at FDIC, 550 17th Street NW, Washington, DC 20429. There are instances where records may be maintained at other secure locations, as well as on secure servers maintained by third-party service providers for the FDIC.

SYSTEM MANAGER(S):

Deputy Director, Infrastructure and Operations Services Branch, Division of Information Technology, FDIC, 3501 Fairfax Drive, Arlington, VA 22226.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9, Corporate Powers, of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S) OF THE SYSTEM:

The information in the system is being collected to support and facilitate the approval, monitoring, and disabling of access for individuals that interact with FDIC information technology resources.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system of records include all individuals that interact with FDIC information technology resources, including FDIC employees, FDIC contractors, FDIC volunteers, FDIC interns, Federal and State financial regulator employees, financial institution employees, and other members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: Records related to the authentication and verification of a user, which includes name, email address, government issued identification numbers, photographs of government-issued IDs, to include all personal information and images on the IDs, Social Security number (SSN), phone number, postal address, verification transaction ID, verification pass/fail indicator, date and time of verification transaction, user roles, justification for access, date of separation, trainings status and other prerequisites, and status codes associated with the verification transaction data, names, phone numbers of other contacts, and positions or business/organizational affiliations and titles of individuals who can verify that the individual seeking access has a need for access as well as other contact information provided to FDIC that is derived from other sources to facilitate access to FDIC information technology resources. Logs of activity when interacting with FDIC information technology resources, including, but not limited to, network user ID, password, date and time of access, internet Protocol (IP) address of the device used for access, Media Access Control (MAC) address of the device used for access, hash files, and equipment used to access FDIC's network.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals, entities, and/or information already in other FDIC records systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, local and foreign authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate agencies, entities, and persons when (a) the FDIC suspects or has confirmed that there has been a breach of the system of records; (b) the FDIC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FDIC (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FDIC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(5) To another Federal agency or Federal entity, when the FDIC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach, or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its

information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(6) To contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the FDIC or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) To third parties providing remote or in-person authentication and identity proofing services, as necessary to authenticate and/or identity proof an individual for access to an FDIC service or application.

(8) To sponsors, employers, contractors, facility operators, experts, and consultants in connection with establishing an access account for an individual or maintaining appropriate points of contact and when necessary to accomplish a FDIC need related to this system of records;

(9) To Federal agencies such as Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, Federal Labor Relations Authority, Government Accountability Office, and the Equal Employment Opportunity Commission in the fulfillment of these agencies' official duties.

(10) To international, Federal, State and local, Tribal, or private entities for the purpose of the regular exchange of business contact information in order to facilitate collaboration for official business.

(11) To a Federal agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media and in paper format in secure facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed and may be retrieved by a variety of fields, including, but not limited to, name, username, email address, business affiliation, or other data fields previously identified in this SORN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records may be maintained for as long as six years following the termination of an individual's FDIC user account in accordance with approved records retention schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical, and physical security measures. Administrative safeguards include written guidelines on handling personal information, including agency-wide procedures for safeguarding personally identifiable information. In addition, all FDIC staff are required to take annual privacy and security training. Technical security measures within FDIC include restrictions on computer access to authorized individuals who have a legitimate need to know the information; required use of strong passwords that are frequently changed; multi-factor authentication for remote access and access to many FDIC network components; use of encryption for certain data types and transfers; firewalls and intrusion detection applications; and regular review of security procedures and best practices to enhance security. Physical safeguards include restrictions on building access to authorized individuals, security guard service, and maintenance of records in lockable offices and filing cabinets.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them in this system of records should submit their request online through *https://www.secure release.us/.* Individuals will be required to provide proof of identity, a detailed description of the records they seek, including the time period when the records were created and other supporting information where possible. Alternatively, individuals may provide a request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest or request an amendment to their records in this system of records should submit their request online through *https://www.securerelease.us/.* Individuals will be required to provide proof of identity, a detailed description of the records they seek, including the time period when the records were created and other supporting information where possible, and the reason for amendment or correction. Alternatively, individuals can provide a request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals wishing to know whether this system contains information about them should submit their request online through *https://www.securerelease.us/.* Individuals will be required to provide proof of identity, a detailed description of the records they seek, including the time period when the records were created and other supporting information where possible. Alternatively, individuals can provide a request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 25, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–09204 Filed 5–1–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 23–01]

Samsung Electronics America, Inc., Complainant v. SM Line Corporation, Respondent; NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT; Served: April 19, 2023

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Samsung Electronics America, Inc., hereinafter ''Complainant,'' against SM Line Corporation, (hereinafter ''Respondent.'') Complainant is a corporation organized and existing under the laws of the State of New York, with a principal place of business in New Jersey. Complainant identifies SM Line Corporation as a vessel-operating common carrier with its corporate office in Korea, and its principal corporate office in Arizona.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), 41104(a)(14), and 41104(a)(15) and 46

CFR 545.4 and 545.5 regarding its practices and the billing and payment of costs and charges on shipments of cargo, including demurrage, detention, rail storage, and other inland transportation-related costs and charges. An answer to the complaint is due to be filed with the Commission within twenty-five (25) days after the date of service. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-01/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by April 19, 2024, and the final decision of the Commission shall be issued by November 4, 2024.

William Cody,

Secretary.

[FR Doc. 2023–09272 Filed 5–1–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 18, 2023.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Cory R. King, Douglas C. King, Karel S. King, Randall E. King, Troy D. King, and Patsy L. Smith; all of Columbus Grove, Ohio; all individually and all members of the King Family Control Group,* a group acting in concert, to retain voting shares of The Corn City State Bank, Deshler, Ohio.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–09307 Filed 5–1–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than June 2, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Multi-Bank Services, Ltd., Southfield, Michigan;* to become a bank holding company by acquiring Florence Bancorporation, Inc., and thereby indirectly acquiring Great North Bank, both of Florence, Wisconsin.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198. Comments can also be electronically to *kcapplicationcomments@kc.frb.org*:

1. *Stockgrowers State Bank Employee Stock Ownership Plan, Ashland, Kansas;* to acquire additional voting shares up to 39 percent of Stockgrowers Banc Corporation, Ashland, Kansas, and thereby indirectly acquire additional shares of Stockgrowers State Bank, Ashland, Kansas, and Peoples Bank, Coldwater, Kansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–09308 Filed 5–1–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843) and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 1, 2023.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *LINKBANCORP, Inc. Camphill, Pennsylvania;* to acquire Partners Bancorp, Salisbury, Maryland, and thereby indirectly acquire The Bank of Delmarva, Seaford, Delaware, and Virginia Partners Bank, Fredericksburg, Virginia, and through Virginia Partners Bank's subsidiary, Johnson Mortgage Company, LLC, Newport News, Virginia, to engage in activities related to extending credit or servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 N Pearl St., Dallas, Texas 75201. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *RJ Pope Management GP, LLC, and RJ Pope Investments IV, Ltd., both of Longview, Texas;* to become bank holding companies by retaining 47.06 percent of the voting shares of Overton Financial Corporation, Overton, Texas, and indirectly retaining voting shares of Overton Delaware Corporation, Lindale Delaware Corporation, Longview Financial Corporation, and Texas Bank and Trust Company, all of Longview, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–09269 Filed 5–1–23; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for its Rule Governing Pre-Sale Availability of Written Warranty Terms. The current clearance expires on May 31, 2023.

DATES: Comments must be filed by June 1, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. The *reginfo.gov* web link is a United States Government website produced by the Office of Management and Budget (OMB) and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Laura Basford, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2343.

SUPPLEMENTARY INFORMATION:

Title: Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule or Rule), 16 Part CFR 702.

OMB Control Number: 3084–0112.

Type of Review: Extension of a currently approved collection.

Background

The Pre-Sale Availability Rule, 16 CFR part 702, is one of three rules [1] that the FTC issued as required by the Magnuson Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act).[2] The Pre-Sale Availability Rule requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than $15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door to door sales. In addition, in 2016, the FTC revised the Rule to allow warrantors to post warranty terms on internet websites if they also provide a non-internet based method for consumers to obtain the warranty terms and satisfy certain other conditions.[3] The revised Rule also allows certain sellers to display warranty terms pre-sale in an electronic format if the warrantor has used the online method of disseminating warranty terms.

Likely Respondents: Manufacturers and retailers of consumer products.

Estimated Annual Hours Burden: 2,764,837 hours (149,017 hours for manufacturers + 2,615,820 hours for retailers).

- Manufacturers account for approximately 149,017 hours (27,094 manufacturers × 5.5 hours)
- Retailers account for approximately 2,615,820 hours (523,164 retailers × 5.0 burden hours)

Estimated Annual Cost Burden: $67,738,531 (which is derived from $35,942,894 for sales associates + $31,795,637 for clerical workers).

- Sales Associates: (1,382,419 hours) ($26/hour) = $35,942,894
- Clerical Workers: (1,382,419 hours) ($23/hour) = $31,795,637

Total Annual Capital or Other Non-labor Costs: De minimis.

Request for Comment

On January 9, 2023, the FTC sought public comment on the information collection requirements associated with the Rule. 88 FR 1229. No germane comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Your comment—including your name and your state—will be placed on the

[1] The other two rules relate to the information that must appear in a written warranty on a consumer product costing more than $15 if a warranty is offered and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] 81 FR 63664–70 (Sept. 15, 2016).

public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–09276 Filed 5–1–23; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements in its Informal Dispute Settlement Procedures Rule (''the Dispute Settlement Rule'' or ''the Rule''). The current clearance expires on July 31, 2023.

DATES: Comments must be filed by June 1, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Laura Basford, General Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2343, *lbasford@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule), 16 CFR part 703.

OMB Control Number: 3084–0113.

Type of Review: Extension of a currently approved collection.

Abstract: The Dispute Settlement Rule is one of three rules [1] that the FTC implemented pursuant to requirements of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (''Warranty Act'' or ''Act'').[2] The Dispute Settlement Rule, 16 CFR part 703, specifies the minimum standards which must be met by any informal dispute settlement mechanism (''IDSM'') that is incorporated into a written consumer product warranty and which the consumer is required to use before pursuing legal remedies under the Act in court (known as the ''prior resort requirement'').[3]

The Dispute Settlement Rule standards for IDSMs include requirements concerning the mechanism's structure (*e.g.,* funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (*e.g.,* notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that IDSMs establish written operating procedures and provide copies of those procedures upon request.

Likely Respondents: Warrantors that Use an IDSM (Automobile Manufacturers) and Informal Dispute Settlement Mechanisms.

Estimated Annual Burden Hours: 9,267 (derived from 6,210 recordkeeping hours in addition to 2,070 reporting hours and 987 disclosure hours).

Estimated Annual Labor Costs: $239,093.

Estimated Annual Capital or Other Non-labor Costs: $344,560.

Request for Comment: On January 9, 2023, the FTC sought public comment on the information collection requirements in the Dispute Settlement Rule. 88 FR 1231 (Jan. 9, 2023). No relevant comments were received during the public comment period. Pursuant to OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 88 FR 1231.

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

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–09293 Filed 5–1–23; 8:45 am]

BILLING CODE 6750–01–P

[1] The other two rules relate to the information that must appear in any written warranty offered on a consumer product costing more than $15 and the pre-sale availability of warranty terms.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] The Dispute Settlement Rule applies only to those firms that choose to require consumers to use an IDSM. Neither the Rule nor the Act requires warrantors to set up IDSMs. A warrantor is free to set up an IDSM that does not comply with the Rule as long as the warranty does not contain a prior resort requirement.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for

an additional three years the Office of Management and Budget clearance for information collection requirements in its Fuel Rating Rule (the Rule). The current clearance expires on September 30, 2023.

DATES: Comments must be filed by July 3, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fuel Rating Rule, PRA Comment, P145403,'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: Fuel Rating Rule (the Rule), 16 CFR part 306.

OMB Control Number: 3084–0068.

Type of Review: Extension of a currently approved collection.

Likely Respondents

(a) *Recordkeeping:* Refiners, Producers, Importers, Distributors, and Retailers of the Covered Fuel Types.

(b) *Disclosure:* Retailers of the Covered Fuel Types.

Estimated Annual Burden Hours: 31,976 (derived from 13,043 recordkeeping hours added to 18,933 disclosure hours).

Estimated Annual Labor Costs: $453,627.

Estimated Annual Capital or Other Non-Labor Costs: $104,131.

Abstract

The Fuel Rating Rule, 16 CFR part 306 (OMB Control Number: 3084–0068), establishes standard procedures for determining, certifying, and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels, as required by the Petroleum Marketing Practices Act. 15 U.S.C. 2822(a)–(c). The Rule also requires refiners, producers, importers, distributors, and retailers to retain records showing how the ratings were determined, including delivery tickets or letters of certification.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Rule.

Burden Statement

Estimated annual burden hours: 31,976 (derived from 13,043 recordkeeping hours added to 18,933 disclosure hours).

Recordkeeping: Based on industry sources, staff estimates that approximately 156,515 fuel industry members [1] each incur an average annual burden of approximately five minutes to ensure retention of relevant business records [2] for the period required by the Rule, resulting in a total of 13,043 hours.

Disclosure: Staff estimates that affected industry members incur an average burden of approximately one hour to produce, distribute, and post octane rating labels. Because the labels are durable, only about one of every eight industry member retailers (18,933 of 151,463 industry member retailers) incur this burden each year, resulting in a total annual burden of 18,933 hours.

Estimated annual labor costs: $453,627.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Here, the average hourly wages of refiners, producers, distributors, and importers is $38.14.[3] The average hourly wages of retailers is $13.86.[4] The recordkeeping component, 13,043 hours, consists of approximately 430 hours for producers, distributors, and importers; and 12,613 hours for retailers. Thus, the total annual labor cost for recordkeeping is $191,216 ((430 hours × $38.14/hour) + (12,613 hours × $13.86/hour)). The disclosure component, which concerns retailers, is approximately 18,933 hours. Thus, total annual labor cost for disclosure is $262,411 (18,933 hours × $13.86/hour).

Estimated annual non-labor costs: $75,732.

Staff believes that the Rule does not impose any capital costs for producers, importers, or distributors of fuels. Retailers, however, incur the cost of procuring and replacing fuel dispenser labels to comply with the Rule. Staff conservatively estimates that the price per automotive fuel label is $2.77 and that the average automotive fuel retailer has six dispensers; thus, $16.62 labeling cost at inception per retailer.[5] Staff has previously estimated a dispenser useful life range of 6 to 10 years and, based on that, assumed a useful life of 8 years for labels, the mean of that range. Given that, replacement labeling will not be necessary for well beyond the relevant period at issue, *i.e.,* the immediate 3-year PRA clearance sought. However, conservatively annualizing the $16.62 labeling cost at inception per retailer over that shorter period rather than average useful life, annualized labeling cost per retailer will be $5.50. Cumulative labeling cost would thus be $104,131 (151,463 retailers × ⅛ [6] × $5.50 each, annualized).

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

[1] Staff derived the number of fuel industry members by adding the number of refiners, producers, importers, distributors, and retailers of these types of fuel. Staff consulted government agencies and industry sources in estimating a population of approximately 156,515 fuel industry members, including 151,463 retailers of automotive fuel. Some of the government websites reviewed to update these numbers include: *http://www.eia.gov/dnav/pet/pet_pnp_cap1_dcu_nus_a.htm* (Gasoline Producers); *http://www.eia.gov/biofuels/biodiesel/production/* (Biodiesel Producers); *http://www.afdc.energy.gov/fuels/* (Alternative Fuel Stations); *http://www.nacsonline.com/YourBusiness/FuelsReports/2015/Documents/2015-NACS-Fuels-Report_full.pdf* (Petroleum Stations).

[2] Under the Fuel Rating Rule, refiners, producers, importers, distributors, and retailers of automotive fuel must retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify or post. *See* the Fuel Rating Rule's recordkeeping requirements, 16 CFR 306.7; 306.9; and 306.11.

[3] *See http://www.bls.gov/iag/tgs/iag211.htm#earnings* (Bureau of Labor Statistics, 2021 Occupational Employment Statistics, Hourly mean wages for petroleum pump system operators, refinery operators, and gaugers).

[4] *See http://www.bls.gov/iag/tgs/iag447.htm* (Bureau of Labor Statistics, 2021 Occupational Employment Statistics, Hourly mean wages for service station attendants).

[5] *See* 75 FR 12,470, 12,477 (Mar. 16, 2010) (proposed rulemaking) (estimating the price range per pump to be one to two dollars). Then you factor in inflation since 2010. See *https://www.bls.gov/data/inflation_calculator.htm.*

[6] On average, each label needs to be replaced once every 8 years. Annualizing this cost equates to ⅛ or 0.125.

For the FTC to consider a comment, we must receive it on or before July 3, 2023. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Fuel Rating Rule, PRA Comment, P145403,'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

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

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

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

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–09277 Filed 5–1–23; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for the information collection requirements of its Fair Credit Reporting Risk-Based Pricing Regulations (''Risk-Based Pricing Rule'' or ''Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the risk-based pricing provisions (Subpart H) of the CFPB's Regulation V regarding other entities. That clearance expires on September 30, 2023.

DATES: Comments must be filed by June 1, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Genevieve Bonan, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, 400 7th Street SW, Drop 5422, Washington, DC 20024, *gbonan@ftc.gov,* (202) 326–3139.

SUPPLEMENTARY INFORMATION:

Title of Collection: Fair Credit Reporting Risk-Based Pricing Regulations, 16 CFR part 640.

OMB Control Number: 3084–0145.

Type of Review: Extension without change of currently approved collection.

Abstract: The Risk-Based Pricing Rule and the CFPB's Regulation V require that a creditor provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor.[1] Additionally, these provisions require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 8,951,460.

Estimated Annual Labor Costs: $179,566,288.

Request for Comment

On February 24, 2023, the FTC sought public comment on the information collection requirements in the Risk-Based Pricing Rule and its shared enforcement with the CFPB of the risk-based pricing provisions (Subpart H) of the CFPB's Regulation V. 88 FR 11,917 (February 24, 2023). No germane comments were received during the public comment period. Pursuant to OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while

[1] 16 CFR 640.3–640.4; 12 CFR 1022.72–1022.73.

seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 88 FR 11,917.

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

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–09279 Filed 5–1–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''AHRQ and PCORI Learning Health System Embedded Scientist Training and Research Centers (P30)''. This SEP meeting will be closed to the public.

DATES: June 6–7, 2023.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for ''AHRQ and PCORI Learning Health System Embedded Scientist Training and Research Centers (P30)'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: April 26, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–09191 Filed 5–1–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10853]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 3, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement

and associated materials (see **ADDRESSES**).

CMS 10853 Patient Provider Dispute Resolution Requirements Related to Surprise Billing: Part II

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Patient Provider Dispute Resolution Requirements Related to Surprise Billing: Part II; *Use:* The Consolidated Appropriations Act, 2021 (CAA), which includes the No Surprises Act provides Federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise bills arise most frequently.

The Act adds a new Part E of title XXVII of the Public Health Service Act establishing requirements applicable to providers, and facilities. These include provisions at new PHS Act sections 2799B–6 which requires providers and facilities to furnish a good faith estimate of expected charges upon request or upon scheduling an item or service for an individual. Providers and facilities are required to inquire if an individual is enrolled in a group health plan, group or individual health insurance coverage, a Federal Employees Health Benefits (FEHB) plan, or a Federal health care program and if enrolled in a group health plan, or group or individual health insurance coverage, or a health benefits plan under chapter 89 of title 5, whether the individual is seeking to have a claim for such item or service submitted to such plan or coverage (hereafter referred to as an ''uninsured (or self-pay) individual''). In the case that an uninsured (or self-pay) individual requesting a good faith estimate for an item or service or schedules an item or service to be furnished, PHS Act section 2799B–6(2)(B) and the October 2021 interim final rules at 45 CFR 149.610 require providers and facilities to furnish the good faith estimate to the uninsured (or self-pay) individual.

No Surprises Act section 112 also adds PHS Act section 2799B–7 as added by the interim final rules at 45 CFR 149.620 which directs the Secretary of HHS to establish a process under which an uninsured (or self-pay) individual can avail themselves of a patient-provider dispute resolution (PPDR) process if their billed charges after receiving an item or service are substantially in excess of the expected charges listed in the good faith estimate furnished by the provider or facility, pursuant to PHS Act section 2799B–6. This information collection request (ICR) focuses on the patient-provider dispute resolution process requirements under the October 2021 interim final rules (October 7, 2021, 86 FR 55980).

Dated: April 26, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–09198 Filed 5–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1874]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Perceptions of Prescription Drug Products With Medication Tracking Capabilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by June 1, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Perceptions of Prescription Drug Products with Medication Tracking Capabilities.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Perceptions of Prescription Drug Products With Medication Tracking Capabilities

OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

The mission of the Office of Prescription Drug Promotion (OPDP) is to protect the public health by helping to ensure that prescription drug promotional material is truthful, balanced, and accurately communicated so that patients and health care providers can make informed decisions about treatment options. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and the characteristics of the disease and product impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how

understanding of prescription drug risks and benefits may vary as a function of audience. Our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features.

Because we recognize that the strength of data and the confidence in the robust nature of the findings are improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our home page at *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research,* which includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office.

Patient non-adherence to medication regimens is a well-known challenge in health care. The World Health Organization defines adherence as the extent to which a person's behavior—taking medication, following a diet, and/or executing lifestyle changes—corresponds with agreed recommendations from a health care provider (Ref. 1). It is estimated that only half of all patients with chronic health conditions take their medications as prescribed (Ref. 2), leading to as many as 100,000 preventable deaths and $100 billion in additional medical costs every year (Ref. 3). Numerous solutions have been tried to improve adherence, including resource-intensive approaches such as directly observed therapy, which entails a trained observer watching as the patient takes their medications (Ref. 4), and technology-supported tools for patients (*e.g.,* smartphone apps) (Ref. 5). As attention to the public health issue of medication adherence has grown, OPDP has noted a corresponding increase in the number of claims and presentations in prescription drug promotion that focus, either directly or through implication, on a product's potential to improve adherence to treatment regimens. Many of these presentations include information about options and capabilities available to help patients track their medication usage.

One avenue that prescription drug sponsors have begun exploring to track medication use includes the development of software that is disseminated by or on behalf of the drug sponsor and accompanies one or more of the sponsor's prescription drugs. This software is called prescription drug use-related software.[1] Studies exploring drug products with prescription drug use-related software have been conducted with medications to treat an array of chronic disorders, including psychiatric disorders (Ref. 6), uncontrolled type 2 diabetes (Ref. 7), end-stage renal disease requiring transplants (Ref. 8), and opioid use among patients with acute fractures (Ref. 9).

In recent years, new technologies that capture data on medication-taking behavior and drug administration have been employed. The SureClick 2.0 autoinjector for the prescription medication ENBREL, for example, has Bluetooth built into the white cap that covers the needle. The autoinjector records initial removal of the cap and can send this data via Bluetooth to a paired smartphone using a mobile app (Ref. 10). Technology can also now support the use of ingestible sensors embedded in pills that will emit a weak signal to a receiver (patch or lanyard) worn by the patient after the pill has been swallowed (Ref. 11). These data can then be transmitted to a paired mobile device and viewed by the patient through a smartphone app (Ref. 12). Whether these new technologies will have an impact on adherence is currently unknown.

Very little is known about patient and health care provider perceptions of products that track medication use or that work in tandem with software to track medication use, with most commentaries having been largely theoretical (Refs. 13 and 14). The focus of the present study is to explore patient and health care provider perceptions of a fictitious prescription drug product that is accompanied by software that is intended to track medication use.

We have the following specific questions:

Research Questions

1. When prescription drug promotional communications include claims about a product's ability to track medication use, do these claims influence perceptions about the product's risks and/or benefits (including its effect on medication adherence)?

2. If the promotional claims about the product's ability to track medication use are accompanied by a disclosure that describes what is known about the effect of medication tracking on medication adherence, does this have an influence on perceptions of the product's risks and/or benefits (including its effect on medication adherence)?

To complete this research, we propose the design in table 1, which varies based on:

- Whether the fictitious prescription drug product includes technology that tracks medication use;
- Whether the prescription drug promotional communication includes a disclosure describing what is known about the tracking technology's effect on medication adherence; and
- What the disclosure communicates about the tracking technology's effect on medication adherence (positive effect shown, no effect shown, or unknown effect).

TABLE 1—PROPOSED ONE-WAY, FIVE-LEVEL DESIGN (1 × 5)

Experimental condition	Claims about existence of medication tracking technology	Disclosure about technology's effect on adherence	Content of disclosure
1. Drug	No	No.	
2. Drug + medication tracking technology	Yes	No.	
3. Drug + medication tracking technology + no adherence data collected.	Yes	Yes	No data are available on the technology's effect on adherence.
4. Drug + medication tracking technology + data show no effect on adherence.	Yes	Yes	Data show the technology has no effect on adherence.

[1] In 2018, FDA established a public docket to solicit public comment on a proposed framework for regulating software applications disseminated by or on behalf of drug sponsors for use with one or more of their prescription drug products. See *https://www.federalregister.gov/documents/2018/11/20/2018-25206/prescription-drug-use-related-software-establishment-of-a-public-docket-request-for-comments.*

TABLE 1—PROPOSED ONE-WAY, FIVE-LEVEL DESIGN (1 × 5)—Continued

Experimental condition	Claims about existence of medication tracking technology	Disclosure about technology's effect on adherence	Content of disclosure
5. Drug + medication tracking technology + data show a positive effect on adherence.	Yes	Yes	Data show the technology has a positive effect on adherence.

Note: Condition 5 is the only condition in which an adherence benefit has been demonstrated for the fictitious product. The evidence required to support a medication adherence claim is not the focus of this study, and the evidence will not be described in the disclosure.

Condition 2 is a control because the drug product does include medication tracking technology, but the promotional communication does not include a disclosure about the technology's effect on medication adherence. Condition 1 is a true control because the drug product does not include medication tracking technology. Comparisons between conditions 1 and 2 will show us the baseline of this issue, *i.e.,* will indicate whether the fact that the drug product contains a tracking technology will alter perceptions of risks and benefits (including adherence).

We will conduct pretests with 50 consumers who self-identify as having been diagnosed with diabetes and 50 primary care physicians who treat diabetes (both obtained from a web-based research vendor) to ensure that the questionnaire programming works as expected. For the main study, we will then recruit 350 consumers who self-identify as having been diagnosed with diabetes and 350 primary care physicians who treat diabetes. Each participant will see one of five versions of a consumer web page for a fictitious prescription diabetes treatment, as reflected in table 1. They will answer a questionnaire designed to take no more than 20 minutes regarding their perception of the product's benefits, risks, and effect on adherence.

In the **Federal Register** of September 23, 2022 (87 FR 58103), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one submission that was not PRA-related (*regulations.gov tracking number lar–vv69–9wok*).

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1] [2]

Activity	Number of respondents	Number of responses per respondent	Total annual respondents	Average burden per response	Total hours
Screener Consumers	680	1	680	.08 (5 minutes)	54.4
Screener Primary Care Physicians	680	1	680	.08 (5 minutes)	54.4
Pretest Consumers	50	1	50	.33 (20 minutes)	16.5
Pretest Primary Care Physicians	50	1	50	.33 (20 minutes)	16.5
Main Study Consumers	350	1	350	.33 (20 minutes)	115.5
Main Study Primary Care Physicians	350	1	350	.33 (20 minutes)	115.5
Total					372.8

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in decimal format.

References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

* 1. World Health Organization, ''Adherence to Long-Term Therapies: Evidence for Action,'' p. 3, 2003, available at *https://apps.who.int/iris/handle/10665/42682,* accessed May 16, 2022.

2. Frias, J., N. Virdi, P. Raja, et al., ''Effectiveness of Digital Medicines to Improve Clinical Outcomes in Patients with Uncontrolled Hypertension and Type 2 Diabetes: Prospective, Open-Label, Cluster-Randomized Pilot Clinical Trial,'' *Journal of Medical internet Research,* Vol. 19, Issue 7, Article e246, 2017, doi:10.2196/jmir.7833.

3. Kleinsinger, F., ''The Unmet Challenge of Medication Nonadherence,'' *The Permanente Journal,* Vol. 22, Issue 3, Article 18–033, 2018, doi:10.7812/TPP/18–033.

4. Karumbi, J. and P. Garner, ''Directly Observed Therapy for Treating Tuberculosis,'' *Cochrane Database of Systematic Reviews,* Issue 5, Article CD003343, 2015, doi:10.1002/14651858.CD003343.pub4.

5. Dayer, L., S. Heldenbrand, P.O. Gubbins, et al., ''Smartphone Medication Adherence Apps: Potential Benefits to Patients and Providers,'' *Journal of the American Pharmacy Association (2003),* Vol. 53, Issue 2, pp. 172–181, 2013, doi:10.1331/JAPhA.2013.12202.

* 6. FDA, ''FDA Approves Pill with Sensor That Digitally Tracks If Patients Have Ingested Their Medication,'' FDA News Release, November 13, 2017, available at *https://www.fda.gov/news-events/press-announcements/fda-approves-pill-sensor-digitally-tracks-if-patients-have-ingested-their-medication,* accessed May 16, 2022.

7. Browne, S.H., Y. Behzadi, and G. Littlewort, ''Let Visuals Tell the Story: Medication Adherence in Patients with Type II Diabetes Captured by a Novel Ingestion Sensor Platform,'' *JMIR Mhealth Uhealth,* Vol. 3, Issue 4, Article e108, 2015, doi:10.2196/mhealth.4292.

8. Eisenberger, U., R.P. Wüthrich, A. Bock, et al., ''Medication Adherence Assessment: High Accuracy of the New Ingestible Sensor System in Kidney Transplants,'' *Transplantation,* Vol. 96, Issue 3, pp. 245–250, 2013, doi:10.1097/TP.0b013e31829b7571.

9. Chai, P.R., S. Carreiro, B.J. Innes, et al., ''Oxycodone Ingestion Patterns in Acute Fracture Pain with Digital Pills,'' *Anesthesia and Analgesia,* Vol. 125, Issue 6, pp. 2105–2112, 2017, doi:10.1213/ANE.0000000000002574.

* 10. Amgen Inc., ''Enbrel (etanercept): Highlights of Prescribing Information,'' revised April 2021, available at *https://www.pi.amgen.com/~/media/amgen/repositorysites/pi-amgen-com/enbrel/enbrel_pi.pdf,* accessed May 16, 2022.
* 11. Reuter, E., '''Smart Pill' Startup EtectRx Strikes Partnership with Pear Therapeutics,'' *Med City News,* January 14, 2021, available at *https://medcitynews.com/2021/01/smart-pill-startup-etectrx-strikes-partnership-with-pear-therapeutics,* accessed May 16, 2022.
12. The Medical Futurist, ''The Present and Future of Digital Pills,'' July 21, 2020, available at *https://medicalfuturist.com/the-present-and-future-of-digital-pills,* accessed May 16, 2022.
13. George, C.E., ''Should a Psychiatrist Prescribe a Nanodrug to Help Parents Monitor a Teen's Adherence?,'' *AMA Journal of Ethics,* Vol. 21, Issue 4, Article e317–323, 2019, doi:10.1001/amajethics.2019.317.
* 14. Yang, M., ''A Psychiatrist's Perspective on the Digital Pill,'' *KevinMD.com,* December 2, 2017, available at *https://www.kevinmd.com/blog/2017/12/psychiatrists-perspective-digital-pill.html,* accessed May 16, 2022.

Dated: April 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09268 Filed 5–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–0362]

A Risk-Based Approach to Monitoring of Clinical Investigations—Questions and Answers; Guidance for Industry; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 12, 2023. The document announced the availability of a final guidance entitled ''A Risk-Based Approach to Monitoring of Clinical Investigations—Questions and Answers; Guidance for Industry.'' The notice of availability for this final guidance was published with an incorrect OMB control number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Mona Shing, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3355, Silver Spring, MD 20993–0002, 301–796–0910.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 2023 (88 FR 22038), in FR Doc. 2023–07687, the following correction is made:

1. On page 22040, in the first column, in the last sentence of ''II. Paperwork Reduction Act of 1995,'' the OMB control number 0910–0733 is corrected to read: ''. . .and the collections of information in FDA's guidance for industry entitled ''Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring'' have been approved under OMB control number 0910–0014.'' The correction changes the OMB control number from a number that was discontinued to an active one.

Dated: April 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09264 Filed 5–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1506]

Methodological Challenges Related to Patient Experience Data; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to collect comments on methodological challenges related to patient experience data in the context of the benefit-risk assessment and product labeling, and other areas of greatest interest or concern to public stakeholders. Public comments will help FDA plan two public workshops focused on methodological challenges and identify priorities for future work.

DATES: Although you can comment at any time, to ensure the Agency considers your comment in our development of the workshops, submit either electronic or written information and comments by July 3, 2023.

ADDRESSES: You may submit comments and information 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–N–1506 for ''Methodological Challenges Related to Patient Experience Data.'' 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.

FOR FURTHER INFORMATION CONTACT: Ethan Gabbour, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6306, Silver Spring, MD 20993, 301–796–9208, *Ethan.Gabbour@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the seventh iteration of the Prescription Drug User Fee Act (PDUFA VII), incorporated as part of the FDA User Fee Reauthorization Act of 2022, FDA committed to continue to strengthen capacity to facilitate development and use of patient-focused methods to inform drug development and regulatory decisions, including issuing this Request for Information (RFI) to elicit public input on methodologic challenges encountered by stakeholders, and other areas of greatest interest or concern to public stakeholders. These methodologic challenges may be related to the collection and analysis of patient experience data, generally, or they may be related more specifically to the submission and evaluation of patient experience data in the context of FDA's benefit-risk assessment or product labeling.

The feedback received as part of this RFI will be summarized in a subsequent **Federal Register** document and will help to inform future public workshops focused on methodologic challenges related to patient-focused drug development. The Federal Food, Drug, and Cosmetic Act, as amended by the 21st Century Cures Act (Pub. L. 114–255) and the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52), defines patient experience data as: ''data that (1) are collected by any persons (including patients, family members, and caregivers of patients, patient advocacy organizations, disease research foundations, researchers, and drug manufacturers); and (2) are intended to provide information about patients' experiences with a disease or condition, including (A) the impact (including physical and psychosocial impacts) of such disease or condition, or a related therapy or clinical investigation, on patients' lives; and (B) patient preferences with respect to treatment of such disease or condition.'' [1]

II. Request for Information and Comments

Interested persons are invited to provide detailed information and comments on methodological challenges relating to patient experience data, including the submission and evaluation of patient experience data in the context of the benefit-risk assessment and product labeling. Please provide the rationale for any suggestions and include supporting data if available. FDA is particularly interested in information related to the following:

(1) Describe any perceived barriers to the use of patient experience data for regulatory decision making (*e.g.,* benefit-risk assessment, product labeling).

(2) Describe any challenges and limitations experienced when selecting, modifying, or developing fit-for-purpose Clinical Outcome Assessment measures.

(3) Describe any challenges and statistical analysis considerations when constructing and selecting endpoints of interest and in understanding whether an estimated treatment effect corresponds to a real difference in patients' lives.

(4) Describe any challenges and limitations experienced when developing and conducting patient preference studies to support regulatory submissions.

(5) Describe any challenges and limitations when submitting patient experience data to FDA.

[1] Patient experience data is defined for purposes of this guidance in Title III, section 3001 of the 21st Century Cures Act, as amended by section 605 of FDARA, *https://www.congress.gov/115/plaws/publ52/PLAW-115publ52.pdf.*

The public comments collected will help FDA plan two workshops focused on methodological challenges with patient experience data and will identify opportunities for future work.

Dated: April 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09265 Filed 5–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1259]

Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing Approaches; Public Workshop; Request for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled ''Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing Approaches'' that appeared in the **Federal Register** of April 24, 2023. The document announced a public workshop. The document was published with an incorrect topic for discussion. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy, Legislation, and International Affairs, Food and Drug Administration, 301–796–9115, *Lisa.Granger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of April 24, 2023, in FR Doc. 2023–08545 (88 FR 24807), on page 24808, the following correction is made:

- On page 24808, in the second column, in Section II, ''Topics for Discussion at the Public Workshop,'' the fifth topic, ''Science- and risk-based approaches for developing and accessing innovative technologies across platform products and sites to streamline adoption.'' is corrected to read ''Science- and risk-based approaches for developing and assessing innovative technologies across platform products and sites to streamline adoption.''

Dated: April 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09206 Filed 5–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2066]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Certification of Identity for Freedom of Information Act and Privacy Act Requests

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by June 1, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0832. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Certification of Identity for Freedom of Information Act and Privacy Act Requests

OMB Control Number 0910–0832—Extension

This information collection supports Form FDA 3975 entitled ''Certification of Identity,'' which is used by FDA to identify an individual requesting a particular record under the Freedom of Information Act (FOIA) and the Privacy Act. The form is available on our website (*https://www.fda.gov/media/107210/download*); although if an individual requests one, we will send it by mail or email. The form is required only if an individual makes a FOIA request or Privacy Act request for their own records but has not provided sufficient assurance of identity in the incoming request.

The FOIA grants the public a right to access Federal records not normally prepared for public distribution. The Privacy Act grants a right of access to members of the public who seek access to one's own records that are maintained in an Agency's system of records (*i.e.,* the records are retrieved by that individual's name or other personal identifier). The statutes overlap, and individuals who request their own records are processed under both statutes. The Agency may need to confirm that the individual making the FOIA or Privacy Act request is indeed the same person named in the Agency records. Respondents to the information collection are asked for certain information including name, citizenship status, social security number, address, date of birth, place of birth, signature, and date of signature.

In the **Federal Register** of November 7, 2022 (87 FR 67040), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3975	24	1	24	0.17 (10 minutes)	4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We have adjusted our burden estimate to reflect actual submissions, which results in a decrease to the currently approved burden.

Dated: April 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09249 Filed 5–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ASPREE–XT Study Review.

Date: May 25, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rajasri Roy, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–6477, *rajasri.roy@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09096 Filed 5–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; telehealth interventions to Support the psychological well-being of family caregivers of ADRD Patients.

Date: June 8, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajasri Roy, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–6477, *rajasri.roy@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 25, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09099 Filed 5–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 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: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Study Section Institutional Training Grants.

Date: June 1–2, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, 301–827–7975, *reillymp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 25, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09093 Filed 5–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Transportation Security Officer (TSO) Medical Questionnaire

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0032, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves using a questionnaire to collect medical information from candidates for the job of Transportation Security Officer (TSO) to ensure their qualifications to perform TSO duties pursuant to the Aviation and Transportation Security Act.

DATES: Send your comments by June 1, 2023. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on January 30, 2023, 88 FR 5903.

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

Title: Transportation Security Officer (TSO) Medical Questionnaire.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0032.

Forms(s): Transportation Security Officer Medical Questionnaire.

Affected Public: Applicants for employment as a TSO with TSA.

Abstract: TSA currently collects relevant medical information from TSO candidates for the purpose of assessing whether the candidates meet the qualification standards the agency has established pursuant to section 111 of the Aviation and Transportation Security Act, Public Law 107–71 (115 Stat. 597; Nov. 19, 2001), as codified at 49 U.S.C. 44935. TSA collects this information through the Security Officer Medical Questionnaire, which enables TSA to collect the information necessary to assist health care providers in making determinations regarding candidates' medical and physical abilities to successfully perform the job without being overly intrusive.

Number of Annual Respondents: 22,500.

Estimated Annual Burden Hours: An estimated 37,125 hours annually.

Dated: April 27, 2023.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2023–09251 Filed 5–1–23; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Law Enforcement/Federal Air Marshal Service Physical and Mental Health Certification

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0043, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves forms that applicants to, and incumbents in, the position of Federal Air Marshal (FAM) are required to complete regarding their physical and mental health history.

DATES: Send your comments by June 1, 2023. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on January 25, 2023, 88 FR 4842.

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 *http://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

Title: Law Enforcement/Federal Air Marshal Service Physical and Mental Health Certification.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0043.

Forms(s): TSA Form 1163, TSA Form 1164, TSA Form 1133–3.

Affected Public: Law Enforcement/Federal Air Marshal Service, FAM applicants and healthcare providers.

Abstract: TSA requires that applicants for FAM positions meet certain medical standards, including whether the individual has an established medical history or clinical diagnosis of psychosis, neurosis, or any other personality or mental disorder that clearly demonstrates a potential hazard to the performance of FAM duties or the safety of self or others. Information collected on TSA Form 1164, *Mental Health Certification,* is used to assess the eligibility and suitability of FAM applicants who have been issued a conditional offer of employment. The collection also includes the following additional forms to assist in the determination and in conjunction with further evaluation requests, as needed, for applicants of a FAMs position or incumbent FAMs: (1) TSA Form 1163, *Treating Physician Status Report* (TPSR), and (2) TSA Form 1133–3, *Practical Exercise Performance Requirements* (PEPR).

Number of Respondents: 200.

Estimated Annual Burden Hours: An estimated 225 hours annually.

Dated: April 27, 2023.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2023–09257 Filed 5–1–23; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7076–N–08]

60-Day Notice of Proposed Information Collection: Public Housing Capital Fund Amendments to the Annual Contributions Contract, OMB Control No.: 2577–NEW

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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.

Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Leea J. Thornton, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–6455. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Capital Fund Amendments to the Annual Contributions Contract.

OMB Approval Number: New Collection.

Type of Request: New.

Form Number: HUD–52840A.

Description of the need for the information and proposed use: HUD previously submitted this information under collection OMB 2577–0075 which included inventory removal information as well as information on amendments to the ACC. The reason for the move is to keep similar types of information in separate collections. In addition to moving this information to a new collection, the HUD–52190 Declaration of Trust/Restrictive Covenants and the Mixed Finance Amendment to the ACC were moved to OMB 2577–0275—Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units. All other information regarding inventory removals was retained in OMB 2577–0075 which is being renewed. PHAs are required to submit information to HUD in connection with their grantee duties to operate and maintain/modernize public housing dwelling units and other real property under the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437g). Section 9 of the 1937 Act permits the Secretary of HUD to make grants (*i.e.,* annual contributions) to public housing agencies (PHAs) to achieve and maintain the low-income character of public housing projects. The Secretary is required to embody the provisions for such annual contributions in an agreement (*i.e.,* the ACC). Applicable regulations are 24 CFR part 905 for public housing development and modernization.

Respondents: Public Housing Agencies.

ACC provisions/HUD form	Total responses	Burden hours per response	Total hours	Cost per hour	($) Total cost
1. Amend ACC for Capital Fund Finance	10	10.8	108	$44.56	$4,812
2. Amend ACC for Annual Capital Fund Formula Grant via form HUD 52840–A	2,770	3.9	10,803	44.56	481,382
3. Amend ACC for Emergency Capital Fund Grant	38	2.6	99	44.56	3,905
4. Amend ACC Capital Fund for Safety and Security	75	1.3	98	44.56	3,865
5. Amend ACC to Recapture Annual Capital Fund Formula Grant via form HUD 52840–A	123	5.2	640	44.56	25,242
6. Amend ACC for Energy Performance Contract	38	5.1	194	44.56	7,651
Totals	3,067		11,970		533,352

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Steven Durham,

Acting Chief, Office of Policy, Programs and Legislative.

[FR Doc. 2023–09220 Filed 5–1–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500170662]

Notice of Public Meeting for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM's) Southeast Oregon Resource Advisory Council (RAC) will meet as follows.

DATES: The Southeast Oregon RAC will meet Tuesday and host a field tour Wednesday, June 27 and 28, 2023, from 8 a.m. to 4:30 p.m. Pacific Time each day. All meetings are open to the public. There will be a virtual participation option available for the Tuesday meeting. A public comment period will be offered at 3 p.m. Tuesday, June 27. Participation instructions will be available on the RAC's web page in advance of the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac.* The Wednesday, June 28 meeting will consist of a field tour, and no virtual participation option will be available.

At 8 a.m. on Wednesday, June 28, the RAC will depart for a tour of the McDermitt Caldera, which is expected to last the full day. To participate in the tour, please notify RAC coordinator Larisa Bogardus at (541) 219–6863 or *lbogardus@blm.gov* no later than 4:30 p.m. Tuesday, June 20, 2023, so arrangements can be made to accommodate the group size. Members of the public are welcome on the field tour but must provide their own transportation and meals.

ADDRESSES: The Tuesday meeting will be held at the McDermitt Community Hall, 175 S. US Highway 95, McDermitt, NV 89421. The field tour on Wednesday will depart from the same location. The final agenda and additional meeting details will be posted at least 10 days in advance of the meeting on the RAC web page: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac.*

Public comments can be mailed to BLM Vale District, Attn: Wayne Monger, 100 Oregon St., Vale, OR 97918 or sent via email to *dmonger@blm.gov.* All comments received will be provided to the Southeast Oregon RAC members.

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus, Public Affairs Officer, 3100 H St., Baker City, Ore. 97814; telephone: (541) 219–6863; email: *lbogardus@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC is chartered, and the 15 members are appointed by the Secretary of the Interior. Their diverse perspectives represent commodity, non-commodity, and local interests. The RAC serves in an advisory capacity to BLM and U.S. Forest Service officials concerning planning and management of public land and national forest resources located, in whole or in part within the boundaries of the BLM's Vale, Burns, and Lakeview Districts and the Fremont-Winema and Malheur National Forests. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested before the start of each meeting.

The meeting will include an orientation to mining law; a presentation regarding lithium exploration in the McDermitt Caldera area; a presentation regarding the Calico/Grassy Mountain gold mine proposal; updates regarding the Southeast Oregon and Lakeview Resource Management Plan amendment processes; and any other business that may reasonably come before the RAC. In addition, a field tour of the McDermitt Caldera, managed by Vale District, will be conducted Wednesday, June 28.

Meeting Accessibility/Special Accommodations: For sign language interpreter services, assistive listening devices, or other reasonable accommodations, please contact Larisa Bogardus, Vale District Bureau of Land Management (see **FOR FURTHER INFORMATION CONTACT**) at least 7 business days before the meeting to ensure there is sufficient time to process the request. The Department of the Interior manages accommodation requests on a case-by-case basis.

As noted earlier (see **DATES**), the public may address the Southeast Oregon RAC during the public comment portions of the meeting on June 27, 2023. Depending on the number of persons wishing to speak, the time for individual comments may be limited.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

The Designated Federal Officer will attend the meeting, take minutes, and publish these minutes on the RAC's web page at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac.*

(Authority: 5 U.S.C. 10.)

Darrel W. Monger,

Vale District Manager.

[FR Doc. 2023–09287 Filed 5–1–23; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NTS; PPWOPCADT0/PPMPSPD1T.Y00000]

Official Trail Marker for National Water Trails

AGENCY: National Park Service, Interior.

ACTION: Notice of designation.

SUMMARY: This notice issues the official trail marker insignia for National Water Trails, a subset of National Recreation Trails in the National Trails System. The original graphic image was developed in 2012 with the establishment of the National Water Trails System under Secretary Order 3319. The National Park Service and related agencies have officially adopted and use this insignia to help mark all designated National Water Trails.

FOR FURTHER INFORMATION CONTACT: John Cannella, National Program Manager; National Trails System; National Park Service; 1100 Old Santa Fe Trail, Santa Fe, NM 87505; via email at *john_cannella@nps.gov;* or via phone at (505) 660–5480.

SUPPLEMENTARY INFORMATION: The primary author of this document is John Cannella, National Program Manager, National Trails System, Conservation and Outdoor Recreation Division, Washington Support Office, National Park Service.

The insignia depicted below is prescribed as the official trail marker logo for National Water Trails. Authorization for use of this trail marker is controlled by the National Park Service's National Trails System office.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

Authority: Secretary Order 3319: Establishment of a National Water Trails System; National Trails System Act, 16 U.S.C. 1246(c); and Protection of Official Badges, Insignia, etc., 18 U.S.C. 701.

John Cannella,

National Program Manager, National Trails System.

[FR Doc. 2023–09267 Filed 5–1–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2022–0011; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0025]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Application for Permit To Drill (APD, Revised APD), Supplemental APD Information Sheet, and All Supporting Documentation

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Kye Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov.* Please reference OMB Control Number 1014–0025 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kye Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 4, 2022 (87 FR 47787). One comment was received but was not germane to the information collection.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying

information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR part 250 pertain to Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: the drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

This ICR includes forms BSEE–0123 (APD) and BSEE–0123S (Supplemental APD Information Sheet). The BSEE uses the information from these forms to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. Specifically, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, cementing programs, and blowout preventer (BOP) systems to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. BSEE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BSEE is required by the OCSLA to make available to the public certain information submitted on Forms BSEE–0123 and –0123S.

The forms use and information consist of the following:

BSEE–0123

Heading: BSEE uses the information to identify the type of proposed drilling activity for which approval is requested.

Well at Total Depth/Surface: Information utilized to identify the location (area, block, lease, latitude and longitude) of the proposed drilling activity.

Significant Markers Anticipated: Identification of significant geologic formations, structures and/or horizons that the lessee or operator expects to encounter. This information, in conjunction with seismic data, is needed to correlate with other wells drilled in the area to assess the risks and hazards inherent in drilling operations.

Question/Information: The information is used to ascertain the adequacy of the drilling fluids (mud) program to ensure control of the well, the adequacy of the surface casing compliance with EPA offshore pollutant discharge requirements and the shut in of adjacent wells to ensure safety while moving a rig on and off a drilling location, as well that the worst case discharge scenario information reflects the well and is updated if applicable. This information is also provided in the course of electronically requesting approval of drilling operations via eWell.

BSEE–0123S

Heading: BSEE uses this information to identify the lease operator, rig name, rig elevation, water depth, type well (exploratory, development), and the presence of H2S and other data which is needed to assess operational risks and safety.

Well Design Information: This engineering data identifies casing size, pressure rating, setting depth and current volume, hole size, mud weight, BOP and well bore designs, formation and BOP test data, and other criteria. The information is utilized by BSEE engineers to verify operational safety and ensure well control to prevent blowouts and other hazards to personnel and the environment. This form accommodates requested data collection for successive sections of the borehole as drilling proceeds toward total depth below each intermediate casing point.

Title of Collection: 30 CFR part 250, Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation.

OMB Control Number: 1014–0025.

Form Number: Forms BSEE–0123 and BSEE–0123S.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 11,206.

Estimated Completion Time per Response: Varies from .5 hour to 125 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 77,816.

Respondent's Obligation: Most responses are mandatory while others are to obtain and/or retain a benefit.

Frequency of Collection: Submitted generally on occasion and as required in the regulations.

Total Estimated Annual Nonhour Burden Cost: $4,298,876.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2023–09237 Filed 5–1–23; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1607–1611 (Preliminary)]

Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand, and Vietnam; Institution of Anti-Dumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigation Nos. 731–TA–1607–1611 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of boltless steel shelving units prepackaged for sale from India, Malaysia, Taiwan, Thailand, and Vietnam, provided for in subheading 9403.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by June 9, 2023. The Commission's views must be transmitted to Commerce within five business days thereafter, or by June 16, 2023.

DATES: April 25, 2023.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman ((202) 205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on April 25, 2023, by Edsal Manufacturing Co., Inc., Chicago, Illinois.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold an in-person staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Tuesday, May 16, 2023. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before Friday, May 12, 2023. Please provide an email address for each conference participant in the email. Information on conference procedures will be provided separately and guidance on joining the video conference will be available on the Commission's Daily Calendar. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person. The Director of the Office of Investigations, or other person designated to conduct the investigations, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the conference. Information on conference procedures will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

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.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 19, 2023, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on May 15, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 26, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–09278 Filed 5–1–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–552 and 731–TA–1308 (Review)]

Pneumatic Off-the-Road Tires from India

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on pneumatic off-the-road tires from India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on February 1, 2022 (87 FR 5505) and determined on May 9, 2022, that it would conduct full reviews (87 FR 33209, June 1, 2022). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 21, 2022 (87 FR 64110). The Commission conducted its hearing on March 2, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on April 27, 2023. The views of the Commission are contained in USITC Publication 5417 (April 2023), entitled *Pneumatic Off-the-Road Tires from India: Investigation Nos. 701–TA–552 and 731–TA–1308 (Review).*

By order of the Commission.

Issued: April 27, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–09275 Filed 5–1–23; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Pre-Implementation Planning Checklist Report for State Unemployment Insurance Information Technology Modernization Projects

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This collection is authorized under the Social Security Act, Title III, section 303(a)(6). Building on lessons learned from previous state implementations of modernized UI IT systems, DOL facilitated the development of the ETA 9177—Pre-Implementation Planning Checklist for SWAs to use prior to ''going live'' with a modernized UI IT system. This comprehensive report denotes critical functional areas that SWAs should verify prior to launching a new UI IT system including, but not limited to, technical IT functions and UI business processes that interface with the new system. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 19, 2022 (87 FR 77638).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Pre-Implementation Planning Checklist Report for State Unemployment Insurance Information Technology Modernization Projects.

OMB Control Number: 1205–0527.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 9.

Total Estimated Number of Responses: 6.

Total Estimated Annual Time Burden: 540 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 25, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–09228 Filed 5–1–23; 8:45 am]

BILLING CODE 4510–FW–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2023–0029]

SHINE Technologies, LLC; SHINE Medical Isotope Production Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) regarding the NRC's consideration of issuance of a proposed amendment to the SHINE Technologies, LLC (SHINE, the licensee) Construction Permit No. CPMIF–001, issued on February 29, 2016, as amended. The permit authorizes the construction of the SHINE Medical Isotope Production Facility (SHINE facility) in Rock County, Wisconsin. If approved, the proposed amendment would authorize the receipt and possession of contained special nuclear material (SNM) necessary for the continued construction of the SHINE facility.

DATES: The EA and FONSI referenced in this document are available on May 2, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0029 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0029. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Balazik, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2856; email: *Michael.Balazik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an amendment to Construction Permit No. CPMIF–001, issued to SHINE for the construction of the SHINE facility in Rock County, Wisconsin. SHINE requested the amendment by letter dated October 6, 2022, as supplemented by letter dated February 17, 2023, in accordance with section 50.90 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Application for amendment of license, construction permit, or early site permit.'' The amendment would authorize the receipt and possession of SNM (*i.e.,* uranium-235) contained in the form of neutron detectors (*i.e.,* fission chambers) necessary for the continued construction of the SHINE facility.

In accordance with 10 CFR 51.21, ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC prepared an EA, pursuant to 10 CFR 51.30, ''Environmental assessment,'' that analyzes the environmental impacts of the proposed amendment and alternatives as appropriate. Based on the results of this EA, which is set forth in section II in this document, and in accordance with 10 CFR 51.31, ''Determinations based on environmental assessment,'' paragraph (a), the NRC has determined not to prepare an environmental impact statement for the proposed amendment and is issuing a FONSI, which is set forth in section III in this document.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would amend Construction Permit No. CPMIF–001 to authorize SHINE to receive and possess the SNM contained in the form of neutron detectors, which is necessary for the continued construction of the SHINE facility in Rock County, Wisconsin. The proposed action is requested in the licensee's application dated October 6, 2022, as supplemented by letter dated February 17, 2023.

Need for the Proposed Action

The SNM described in the licensee's application is contained in the form of neutron detectors, which are required for the continued construction of the SHINE facility and would be installed within the facility's neutron flux detection system (NFDS). The licensee's request to receive and possess this SNM is in accordance with applicable provisions in 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material.'' The SNM consisting of uranium-235 is contained in neutron detectors, as described in section 7.8, ''Neutron Flux Detection System,'' of the SHINE final safety analysis report, for installation within the NFDS. The NFDS monitors variables important to the safety functions of an irradiation unit that provide input to the facility's target solution vessel reactivity protection system to perform its safety functions.

The NRC regulations in 10 CFR part 70 contain requirements for the receipt, possession, use, and transfer of SNM.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental review of the proposed action and concludes that there are no significant environmental impacts associated with the proposed action.

As an initial matter, the proposed action would amend the SHINE construction permit to authorize the receipt and possession of SNM necessary for continued construction of the SHINE facility in accordance with applicable provisions in 10 CFR part 70, which ensure the safety of such receipt and possession. Thus, before the NRC could approve the proposed action, it would have to conclude that the applicable provisions in 10 CFR part 70 are satisfied.

Additionally, the NRC previously evaluated the environmental impacts associated with constructing, operating, and decommissioning the SHINE facility in NUREG–2183, ''Environmental Impact Statement for the Construction Permit for the SHINE

Medical Radioisotope Production Facility'' (FEIS), dated October 2015, and in NUREG–2183, Supplement 1, ''Environmental Impact Statement Supplement Related to the Operating License for the SHINE Medical Isotope Production Facility'' (FSEIS), dated January 2023. The FSEIS updates the FEIS and only covers matters that differ from those or that reflect significant new information relative to that discussed in the FEIS. In the FSEIS, the NRC staff concluded that the impacts of SHINE facility construction, operation, and decommissioning are either less than or bounded by the analysis of impacts presented in the FEIS.

The licensee is also required to comply with occupational dose limits in 10 CFR part 20, ''Standards for Protection Against Radiation,'' subpart C, ''Occupational Dose Limits,'' and radiation dose limits for individual members of the public in 10 CFR part 20, subpart D, ''Radiation Dose Limits for Individual members of the Public,'' at all times.

As provided in the application, the proposed amendment authorizing the receipt and possession of contained SNM would not change the types or amounts of radioactive materials in effluents, wastes, and products of the SHINE facility, nor would it increase the probability of accidents. The requested materials would be received and securely stored in an access-controlled area prior to installation into the NFDS. SHINE would inspect, inventory, and place the requested materials into secure storage in accordance with the requirements of 10 CFR 20.1902, ''Posting requirements.'' Shielding would be used as appropriate to minimize radiation exposure of personnel while the requested materials are in storage in accordance with 10 CFR 20.1201, ''Occupational dose limits for adults.'' The requested materials would be in solid form contained within enclosed components that do not present contamination or accidental release hazards. Finally, the application provided that the receipt and possession of the requested materials would not result in the generation of radiological waste.

Additionally, the application provided that there would be no new or substantially different radiological hazards resulting from the receipt and possession of the contained SNM as compared to the construction-related radiological hazards discussed in section 4.8.1.1, ''Radiological,'' of the FEIS. In the FEIS, the NRC staff determined that SHINE has adequate controls in place to ensure that the dose to workers and the public from radioactive materials is within the dose limits of 10 CFR part 20, including a radiation protection program. In the FSEIS, the NRC staff identified no differing or significant new information related to radiological impacts beyond the information in the FEIS.

The transportation of the requested materials would be required to adhere to the applicable regulatory packaging and transportation requirements in NRC regulations (10 CFR parts 20 and 71), the State of Wisconsin Administrative Code Chapter 326, ''Transportation,'' and Department of Transportation requirements (49 CFR parts 172 and 173).

Based on the above, the NRC staff concludes that the proposed action would not have significant radiological human health impacts.

Nonradiological impacts to human health of the construction, operation, and decommissioning of the SHINE facility were previously assessed in section 4.8.1.2, ''Nonradiological,'' of the FEIS. In the FSEIS, the NRC staff identified no differing or significant new information related to nonradiological impacts beyond the information in the FEIS. The application provided that the proposed amendment would not result in any new or substantially different nonradiological hazards resulting from the receipt and possession of the requested materials; therefore, the NRC staff concludes that nonradiological impacts during construction would remain small.

The proposed action would result in no additional direct impacts on land use or water resources, including terrestrial and aquatic biota, because the proposed action involves no new construction or modification of the SHINE facility operational systems previously assessed in the FEIS and the FSEIS. For this same reason, there would be no changes to the types or quantity of nonradiological effluents previously assessed in the FEIS and the FSEIS and, therefore, no changes to the facility's Wisconsin Pollutant Discharge Elimination System permit are needed. Similarly, there would be no changes in ambient air quality, no noticeable effect on socioeconomic conditions in the region, no environmental justice impacts, and no impacts to historic and cultural resources. Therefore, the NRC staff concludes that there would be no significant nonradiological impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in the licensee being unable to complete construction and begin operation of the SHINE facility. However, because the direct impacts from construction have largely already occurred and because the remaining construction, operating, and decommissioning impacts would generally be small as evaluated in the FEIS and the FSEIS, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On April 20, 2023, the NRC notified the Wisconsin Department of Health Services of the EA and FONSI. The state provided no comments. The NRC staff determined that the proposed action would have no effect on Federally listed threatened or endangered species or critical habitat that could occur on or near the SHINE facility site and would have no effect on any historic properties. Therefore, consultation was not required under section 7 of the Endangered Species Act of 1973, as amended, or under section 106 of the National Historic Preservation Act of 1966, as amended.

III. Finding of No Significant Impact

The proposed action is the issuance of an amendment to SHINE Construction Permit No. CPMIF–001 to authorize SHINE to receive and possess contained SNM necessary for the continued construction of the SHINE facility in Rock County, Wisconsin.

Consistent with 10 CFR 51.21, the NRC prepared an EA to determine the impacts of the proposed action. On the basis of the EA included in section II in this document and incorporated by reference in this finding, the NRC concludes that the proposed action would not have a significant adverse effect on the probability of an accident occurring and would not have any significant radiological or nonradiological impacts. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Other than the application dated October 6, 2022, as supplemented by letter dated February 17, 2023, the

related environmental documents are the FEIS and the FSEIS. The FSEIS provides the latest environmental review of the construction, operation, and decommissioning of the SHINE facility and description of the environmental conditions at the SHINE facility.

This EA and FONSI and other related documents are accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.*

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document	ADAMS accession No.
NUREG–2183, ''Environmental Impact Statement for the Construction Permit for the SHINE Medical Radioisotope Production Facility,'' dated October 2015 (FEIS).	ML15288A046.
NUREG–2183, Supplement 1, ''Environmental Impact Statement Related to the Operating License for the SHINE Medical Isotope Production Facility,'' dated January 2023 (FSEIS).	ML23026A312.
Construction Permit No. CPMIF–001 for the SHINE Medical Isotope Production Facility, dated February 29, 2016, as amended.	ML16041A473 (Package). ML19162A026 (Amendment No. 1). ML21320A224 (Amendment No. 2). ML22292A319 (Amendment No. 3).
SHINE Technologies, LLC, Final Safety Analysis Report, Chapter 7, ''Instrumentation and Control Systems,'' Rev. 2, dated August 31, 2022.	ML22249A136.
SHINE Technologies, LLC, ''Request to Amend Construction Permit No. CPMIF–001,'' dated October 6, 2022.	ML22279A951.
SHINE Technologies, LLC, ''Request to Amend Construction Permit No. CPMIF–001 Response to Request for Additional Information,'' dated February 17, 2023.	ML23048A244.

Dated: April 26, 2023.

For the Nuclear Regulatory Commission.

Joshua M. Borromeo,

Chief, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–09226 Filed 5–1–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, May 18, 2023. There will be no in-person gathering for this meeting.

DATES: The virtual meeting will be held on May 18, 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: 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.

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
- Wage area definition of Canyonlands National Park
- Update of North American Industry Classification System based wage survey coverage

Public Participation: The May 18, 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 ''May 18, 2023'' no later than Tuesday, May 16, 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 May 16, 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. 2023–09215 Filed 5–1–23; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–139 and CP2023–141]

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:* May 4, 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:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–139 and CP2023–141; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 8 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 4, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–09262 Filed 5–1–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97387; File No. SR–EMERALD–2023–11]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2023, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 1)a)i) of the Fee Schedule to amend footnote ''*'' to adopt new fees for Priority Customer[3] Complex Orders that remove liquidity that leg into the Simple book.[4] The Exchange originally filed this proposal on March 31, 2023 (SR–EMERALD–2023–08). On April 13, 2023, the Exchange withdrew SR–EMERALD–2023–08 and resubmitted this proposal.

Background

The Exchange assesses transaction rebates and fees to all market participants, which are based upon a threshold tier structure (''Tier''). Tiers are determined on a monthly basis and

[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).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[4] The Simple Order Book or Simple book is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

are based on three alternative calculation methods, as defined in Section 1)a)ii) of the Fee Schedule. The calculation method that results in the highest Tier achieved by the Member [5] shall apply to all Origin types by the Member, except the Priority Customer Origin type. For the Priority Customer Origin calculation, the Tier applied for a Member and its Affiliates [6] is solely determined by calculation Method 3, as defined in Section 1)a)ii) of the Fee Schedule, titled ''Total Priority Customer, Maker sides volume, based on % of CTCV ('Method 3').'' The monthly volume thresholds for each of the methods, associated with each Tier, are calculated as the total monthly volume executed by the Member in all options classes on MIAX Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts,[7] (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (''CTCV'') (as the denominator). CTCV is calculated as the total national volume cleared at The Options Clearing Corporation (''OCC'') in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an ''Exchange System Disruption'' [8] (solely in the option classes of the affected Matching Engine).[9] In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting liquidity, *i.e.,* orders on the MIAX Emerald System, will be assessed the specified ''maker'' rebate or fee (each a ''Maker'') and Members that execute against resting liquidity will be assessed the specified ''taker'' fee or rebate (each a ''Taker'').[10] Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program [11] (''Penny Classes'') than for order executions in standard option classes which are not in the Penny Program (''non-Penny Classes''), for which Members will be assessed higher transaction fees and larger rebates.

Currently, footnote ''*'' provides that Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Footnote ''*'' further provides that, Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

Proposal

The Exchange now proposes to amend footnote ''*'' to adopt fees for Priority Customer Complex Orders that leg into the Simple Order Book. Specifically, the Exchange proposes to amend footnote ''*'' to provide that Priority Customer Complex Orders that remove liquidity that leg into the Simple book will be charged a per contract fee of $0.20 in Penny classes and $0.40 in Non-Penny classes. Additionally, the Exchange proposes to amend the second sentence of footnote ''*'' for clarity to provide that Priority Customer Complex Orders that add liquidity that leg into the Simple book are neither charged nor rebated.

As amended footnote ''*'' will provide that, ''Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that add liquidity that leg into the Simple book are neither charged nor rebated. Priority Customer Complex Orders that remove liquidity that leg into the Simple book will be charged a per contract fee of $0.20 in Penny classes and $0.40 in Non-Penny classes.'' Complex Orders for Origins other than Priority Customer that remove liquidity that leg into the Simple book are charged a per contract ''Taker'' fee of $0.50 in Penny Classes and $0.88 in Non-Penny Classes. These fees are not changing under this proposal.

The purpose of adopting these new fees is for business and competitive reasons. In order to attract order flow, the Exchange initially set its rebates and fees so that they were meaningfully higher/lower than other options exchanges that operate comparable maker/taker pricing models.[12] The Exchange now believes that it is appropriate to adjust its fees to be competitive with other Exchanges that offer similar functionality and have similar fee structures.[13]

Implementation

The proposed changes are immediately effective.

[5] ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Emerald Market Maker) that has been appointed by a MIAX Emerald Market Maker, pursuant to the following process. A MIAX Emerald Market Maker appoints an EEM and an EEM appoints a MIAX Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[7] The term ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[8] The term ''Exchange System Disruption'' means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. *See* the Definitions Section of the Fee Schedule.

[9] A ''Matching Engine'' is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. *See* the Definitions Section of the Fee Schedule.

[10] For a Priority Customer Complex Order taking liquidity in the Strategy Book for both a Penny Class and non-Penny Class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

[11] *See* Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR–EMERALD–2020–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options) (the ''Penny Program'').

[12] *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule.

[13] The Nasdaq ISE Pricing Schedule provides that a $0.25 per contract fee applies instead of the applicable fee or rebate when trading against Priority Customer Complex Orders that leg into the regular order book. *See* ISE Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, footnote 11; Nasdaq Phlx Pricing Schedule provides that Customers will be assessed a $0.15 per contract surcharge to the extent that they execute the individual components of their Complex Orders in SPY against Market Maker or Lead Market Maker quotes that are resting on the Simple Order Book. *See also* Nasdaq Phlx Options 7, Pricing Schedule, Section 3. Rebates and Fees for Adding Liquidity in SPY.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) of the Act [16] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a competitive marketplace in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 12–13% of the equity options market.[17] Therefore, no exchange possesses significant pricing power. More specifically, as of March 24, 2023, the Exchange had a market share of approximately 3.28% of executed volume of multiply-listed equity options for the month of March 2023.[18]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow in response to transaction fee changes. For example, on February 28, 2019, the Exchange's affiliate, MIAX PEARL, LLC (''MIAX Pearl''), filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).[19] MIAX Pearl experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX Pearl March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like those of other options exchanges' fees schedules.

The Exchange believes that its proposal to implement a new fee for Priority Customer Complex Orders that remove liquidity that leg into the Simple book is consistent with Section 6(b)(4) of the Act [20] in that the proposal is reasonable, equitable and not unfairly discriminatory as it applies equally to all similarly situated market participants. The Exchange believes that the application of this fee will continue to encourage Priority Customer order flow to the Exchange and may improve liquidity on the Exchange's Strategy Book. Priority Customer order flow benefits all market participants because it attracts liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating increased order flow and trading opportunities to the benefit of all market participants.

In addition, the Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act [21] because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because an increase in Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange by sending additional orders in an effort to trade with such Priority Customer order flow.

The Exchange believes that assessing a fee for Priority Customer Complex Orders that remove liquidity that leg into the Simple book is equitable and not unfairly discriminatory because the proposed fees will apply equally to all similarly situated participants. The Exchange believes that the application of the fee is equitable and not unfairly discriminatory because, as stated above, Priority Customer order flow enhances liquidity on the Exchange, which in turn provides more trading opportunities and attracts other market participants, thus, facilitating increased order flow and trading opportunities to the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Priority Customer Orders, and the Exchange's current fees schedule currently does so in many places, as does the fee schedule of at least one other exchange.[22]

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges offer similar fees for similar functionality.[23]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(1) and (b)(5).

[17] *See* ''The market at a glance, MTD AVERAGE,'' *available at https://www.miaxoptions.com/* (Data as of March 1, 2023 to March 23, 2023).

[18] *See id.*

[19] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(5).

[22] *See supra* note 13.

[23] *Id.*

broader forms that are most important to investors and listed companies.'' [24]

The Exchange believes that its proposal represents an equitable allocation of fees and is not unfairly discriminatory as the fee will apply uniformly to all Priority Customer Complex Orders that remove liquidity that leg into the Simple Order Book. Additionally, the Exchange recently adopted a new optional complex order instruction, ''Do Not Leg'' or ''DNL,'' [25] that provides Members [26] the ability to direct their complex orders to the Strategy Book [27] exclusively for execution, or if the instruction is not used, allows their complex orders to leg into the Simple Order Book.[28]

The Exchange is making this change for business and competitive reasons as the Exchange initially set its fees lower than other options exchanges that offer similar functionality and operate comparable pricing models.[29] The Exchange now believes that it is appropriate to implement this new fee and application so that it is more in line with other exchanges, but will remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully above and below, in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[30] the Exchange does not believe that the proposed rule change will impose any burden on intra-market or inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will apply uniformly to all similarly situated Priority Customer Complex Orders. The Exchange believes that the proposal will continue to encourage Members to submit Priority Customer Complex Orders to the Exchange, which will increase liquidity and benefit all market participants by providing more trading opportunities. The Exchange notes the fact that preferential pricing to Priority Customers is a long-standing options industry practice. The proposed fees may enhance Priority Customer liquidity on the Exchange's Strategy Book, which, as a result, facilitates increased liquidity and execution opportunities to the benefit of all market participants. Additionally, the Exchange provides an optional complex order DNL instruction that Members may use to prevent their complex orders from legging into the Simple Order Book, and thereby not be subject to the proposed fees.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 12–13% of the equity options market.[31] Therefore, no exchange possesses significant pricing power. More specifically, as of March 24, 2023, the Exchange had a market share of approximately 3.28% of executed volume of multiply-listed equity options for the month of March 2023.[32] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner that will allow the Exchange to remain competitive.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [33] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. circuit stated: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[34] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[35] and Rule

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

[25] *See* Securities Exchange Act Release No. 96378 (November 22, 2022), 87 FR 73364 (November 29, 2022) (SR–EMERALD–2022–31).

[26] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[27] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(b)(17).

[28] Do Not Leg or ''DNL'' is an optional order instruction that may be applied to any complex order (excluding Complex Customer Cross Orders, Complex Qualified Contingent Cross Orders, and cPRIME Orders) to prevent the complex order from legging into the Simple Order Book. *See* Exchange Rule 518(b)(10).

[29] *See supra* note 13.

[30] 15 U.S.C. 78f(b)(8).

[31] *See supra* note 17.

[32] *See id.*

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[34] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[35] 15 U.S.C. 78s(b)(3)(A)(ii).

19b–4(f)(2)[36] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2023–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2023–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–EMERALD–2023–11, and should be submitted on or before May 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09211 Filed 5–1–23; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 240.19b–4(f)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97383; File No. SR–ICEEU–2023–012]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Futures and Options Default Management Policy

April 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 13, 2023, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4)(ii) 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

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') is proposing to adopt a new Futures and Options Default Management Policy (''Policy''),[5] to replace its existing Futures and Options Default Management Policy. The new Policy is intended to provide clearer procedures and guidance for managing a default by one or more Clearing Members.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to adopt a new Futures and Options Default Management Policy, which would address procedures and requirements for the Clearing House's management of an Event of Default with respect to an F&O Clearing Member consistent with the requirements of Clearing House's Rules and Procedures. The Policy would replace the existing Futures and Options Default Management Policy. The new Policy is designed to more clearly reflect and describe various aspects of the Clearing House's existing default management practices and procedures for F&O Contracts (and would not generally change those practices and procedures). The new Policy would also clarify and enhance certain governance matters relating to F&O default management, as well as certain practices relating to hedging strategy following a default, as discussed below. The new Policy would also provide for certain additional scenarios to be used in default testing drills, as discussed below. The new Policy would also eliminate certain outdated or superseded provisions or the provisions that are no longer applicable.

The Policy would include a background section describing the overall purpose of the document, which is to provide structure and guidance for ICE Clear Europe's management of an Event of Default within the framework

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Futures and Options Management Policy.

of the Rules and applicable law, and without attempting to specify the actions the Clearing House would take in all or any particular situations. The background section would also set out the scope of the Policy, which is to set out the key factors to consider in declaring and managing an Event of Default. In addition, it would present the Clearing House's three lines of defense model for managing risks. The First Line of defense would be responsible for ensuring the Policy requirements are met and would consist of the Clearing Risk, Treasury, Operations, Legal, Compliance and Finance Departments. The Second Line of defense would be responsible for challenging the First Line on adherence to the requirements of the Policy and would be the Risk Oversight Department. The Third Line would provide independent and objective assurance to the Board and would be the Internal Audit Function.

The Policy would set out the Clearing House's overall objectives when declaring and managing an Event of Default, which are generally to take timely action to return the Clearing House, as soon as reasonably practicable, to a matched book while aiming to contain losses and liquidity pressures. Depending on the circumstances, other objectives may include ensuring timely completion of settlement, limiting disruption to the market and closing out the defaulter's positions and liquidating collateral in a prudent and orderly manner. The objectives reflect that the default management framework will be guided by the relevant Rules as well as the Policy and any supporting procedures that may be adopted.

The Policy would detail the governance and responsibilities of various personnel and committees with respect to default management. (These provisions are intended to more clearly document existing practice, rather than change that practice.) The Policy would in particular reflect the following: the Board of Directors has delegated to the President the authority to declare an Event of Default and take all actions the Clearing House may take under the rules in managing an event of default. The President has the discretion to consult the ERC Default Management Committee (''DMC''), which is a subcommittee of the Executive Risk Committee. The President has the authority to make final decisions but may delegate powers as appropriate. The DMC would also assume the responsibilities of the President in the declaration and management of an Event of Default if the President is unavailable. The DMC would require a quorum of the majority of voting members of the Executive Risk Committee for the DMC to make decisions and the decisions would have to be by unanimous agreement of the voting members of the Executive Risk Committee present in the meeting. If there are dissenting views at the DMC level, the issue must be escalated to the Board. Consistent with the requirements of the Rules, the Policy would state that a declaration of an Event of Default would be limited to circumstances where an event in Rule 901(a) has occurred with respect to a Clearing Member.

The Policy would also outline various aspects of default management for which processes and procedures should be in place (which processes and procedures are not set out in the Policy itself). The Policy would state that procedures for pre-default monitoring must be in place in order to identify early circumstances that may develop into Events of Default, and procedures should be in place to quickly suspend a defaulting Clearing Member's access to trading and prevent payments or collateral transfers to the defaulting Clearing Member. Furthermore, the Policy would set out that management information would have to be available on short notice to support the President and must be sufficiently detailed to allow for risk management decisions, including key risk details on positions, collateral and liquidity. The Policy would also state that processes should be in place to establish hedging strategies and support timely liquidation of positions. Pursuant to the existing Rules, the Clearing House may engage in hedging trades ahead of liquidating the defaulter's portfolio. The Policy would provide that advice on hedging strategy may be sought from relevant exchanges or market participants. Any hedging strategy would need to be approved by the President before execution. In terms of liquidation, the Policy would provide that a process to liquidate positions via auctions or private sale would have to be in place. For an auction, the Policy would state that factors such as participation and possible risk of auction failure should be considered in determining auction composition. If there is a dependency on a third party, arrangements would have to be in place in case the third party is not available.

The Policy would also address the need for a defined process for client porting (and for liquidation where porting cannot occur). A notification of the opening of the porting window would also have to be communicated to the market in order to allow clients of the defaulting Clearing Member to participate in the porting process. A process would have to be defined to support the porting of client positions and collateral pursuant to the Rules and Standard Terms but subject to applicable law.

The Policy would also address the Clearing House's communication strategy around defaults. Prior to an Event of Default, the Clearing House would endeavor to prevent communications with the concerned Clearing Member becoming public, unless allowed under Rule 106 or required by the Clearing Member's regulators, the Clearing House's regulators, and/or other government authorities. The Clearing House would serve a default notice on the defaulter as soon as practicable after declaring a default and issue a circular in respect of any default notice, consistent with the Rules. ICE Clear Europe would engage with other ICE exchanges, clearing organizations, and external legal advisors when appropriate.

The Policy would reflect the requirement of the Rules that post-default, a net sum would to be calculated according to the methodology in the Rules.

The policy would also require the test and review of the default procedures on a quarterly basis, through practicing certain aspects of the default management process. In addition, the Clearing House would have to conduct a default test on an annual basis with mandatory participation of the Clearing Members. Moreover, a multi-year default management plan would have to be maintained and approved by the Executive Risk Committee and shared with the Board Risk Committee. The multi-year default management plan would have to consider Default Member Scenarios (looking at representative credit and market risk scenarios over the testing cycle), Other Variables (such as the timing of the default and other potential constraints), Liquidity Management (including liquidity issues arising from sourcing liquidity, collateral liquidation and investment counterparty failure), End of Default and Recovery (including testing powers of assessment and recovery mechanisms), People (including relevant personnel and testing the ability of departments to support default management), and Governance (including testing executive governance, communication with the Board and Board approval). Additional testing should be conducted following material changes in the default management process or otherwise where necessary, and more extreme scenarios

or combinations of scenarios should be considered to identify weakness in the default management process. The multi-year default management plan along with the scope, results and lessons learned of each default test would be shared with the Board Risk Committee and the Board. In order to ensure the Board maintains oversight of the default management process, the default drills that include direct participation of the Board members would be done at least on an annual basis.

Finally, the Policy would describe governance, breach management and exception handling, in a manner generally consistent with other ICE Clear Europe policies. The document owner identified by the Clearing House would be responsible for ensuring that the Policy remains up-to-date and reviewed in accordance with the Clearing House's governance processes. Document reviews would encompass at the minimum regulatory compliance, documentation and purpose, implementation, use and open items from previous validations or reviews. Results of the review would have to be reported to the Executive Risk Committee or in certain cases to the Model Oversight Committee. The document owner would also aim to remediate the findings, complete internal governance and receive regulatory approvals before the following annual review is due. The document owner would also be responsible for reporting any material breaches or deviations to the Head of Department, Chief Risk Officer and Head of Regulation and Compliance in order to determine the appropriate governance escalation and notification requirements. Exceptions to the Policy would also be approved in accordance with such governance processes.

The Policy would also recognize that the management of any particular default will depend on factors and circumstances that may be difficult to predict. As a result, the President would be allowed to override elements of the Policy to declare and manage an Event of Default in accordance with the provisions of the Rules.

(b) Statutory Basis

ICE Clear Europe believes that the Policy is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (''Act'')[6] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The Policy is designed to set out the objectives and overall practices and processes of the Clearing House in declaring and managing an Event of Default, recognizing that the details of any particular default will vary. The new Policy would more clearly set out the responsibilities of the President and DMC in declaring and managing a default. The Policy would also outline various aspects of the default management process, including communications, hedging, client porting and liquidation. The Policy would also address default testing, and the Clearing House's multi-year testing plan to address various scenarios and aspects of the default management process. In ICE Clear Europe's view, the Policy will thus facilitate management of the risks related to a default or anticipated default from a Clearing Member, so that the Clearing House can promptly restore a matched book and contain losses. The new Policy will thus promote the prompt and accurate clearing and settlement of cleared transactions and is consistent with the protection of investors and the public interest in the continued operation of the Clearing House in the event of a Clearing Member default. (ICE Clear Europe would not expect the adoption of the Policy to materially affect the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.) Accordingly, the Policy satisfies the requirements of Section 17A(b)(3)(F).[8]

The Policy is also consistent with relevant provisions of Rule 17Ad–22.[9] Rule 17Ad–22(e)(2) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] provide for governance arrangements that are clear and transparent''[10] and ''[s]pecify clear and direct lines of responsibility.[11] As discussed, the Policy would clearly state certain responsibilities of the President, Board, DMC, and Executive Risk Committee, among others, in relation to oversight of the Clearing House's declaration and management of an Event of Default. Specifically, and consistent with current practice, the President would have full authority in declaring and managing an Event of Default, with the ability to delegate if necessary or for the DMC to assume certain responsibilities if the President is unavailable. In line with the Clearing House's other policies and procedures, the Policy would also describe the responsibilities of the document owner and appropriate escalation and notification requirements for responding to exceptions and deviations from the Policy. In ICE Clear Europe's view, the Policy is therefore consistent with the requirements of Rule 17Ad–22(e)(2).[12]

Rule 17A–22(e)(13) [sic] provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] ensure that [sic] the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency's participants and, where [sic] practicable, other stakeholders to participate [sic] the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.''[13] As discussed above, the Policy would address the Clearing House's procedures for testing its default management framework, which includes annual default tests in which participation by Clearing Members is mandatory, and further provides for additional testing in the event of material changes in the default management process. The new Policy would outline the Clearing House's overall multi-year testing plan and address key scenarios and considerations to be included in the default testing process. In ICE Clear Europe's views, these testing procedures, together with the other aspects of the Policy and the underlying Rules, will facilitate its ability to take timely action to contain losses and liquidity pressure in the event of a Clearing Member default. As such, the Policy is consistent with the requirements of Rule 17Ad–22(e)(13).[14]

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17 Ad–22.

[10] 17 CFR 240.17 Ad–22(e)(2)(i).

[11] 17 CFR 240.17 Ad–22(e)(2)(v).

[12] 17 CFR 240.17 Ad–22(e)(2).

[13] 17 CFR 240.17Ad–22(e)(13).

[14] 17 CFR 240.17Ad–22(e)(16). [sic]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the Policy would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Policy is being adopted to document the Clearing House's practices relating to declaring and managing an Event of Default of a Clearing Member. The Policy does not change the rights or obligations of Clearing Members or the Clearing House under the Rules or Procedures. The Policy does set out certain requirements for Clearing Members to participate in annual default testing (reflecting current practice), but the Clearing House does not believe this requirement would impose a material burden on Clearing Members (and in any event such participation is required of all Clearing Members under Commission regulations as set out above). Accordingly, ICE Clear Europe does not believe that adoption of the Policy would adversely affect competition among Clearing Members, materially affect the costs of clearing, adversely affect the ability of market participants to access clearing or the market for clearing services generally, or otherwise adversely affect competition in clearing services. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes 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 amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments 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 pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] 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, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2023–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2023–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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 inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–ICEEU–2023–012 and should be submitted on or before May 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09207 Filed 5–1–23; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34901; 812–15425]

Total Fund Solution and Cromwell Investment Advisors, LLC

April 26, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6-07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants (as defined below) to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: Total Fund Solution and Cromwell Investment Advisors, LLC.

FILING DATES: The application was filed on January 20, 2023, and amended on March 30, 2023 and April 17, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2023, and

should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Fabio Battaglia, III, *fbattaglia@stradley.com* and Elaine E. Richards, *elaine.richards@usbank.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended and restated application, dated April 17, 2023, 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 *https://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. 2023–09205 Filed 5–1–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97384; File No. SR–Phlx–2023–11]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Credits at Equity 7, Section 3

April 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 the Exchange's schedule of fees and credits at Equity 7, Section 3. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of fees and credits at Equity 7, Section 3.[3] Currently, the Exchange has a schedule at Equity 7, Section 3(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that add liquidity on the Exchange and several different charges that it assesses for orders in such securities that access liquidity on the Exchange. The Exchange has a schedule at Equity 7, Section 3(b), which consists of charges and credits that apply for securities priced at less than $1 per share. The Exchange proposes to amend Equity 7, Section 3(a) to: (i) add two new credit tiers for displayed Quotes/Orders; (ii) adjust an existing credit for displayed Quotes/Orders; and (iii) add a supplemental credit for displayed Quotes/Orders. In addition, the Exchange proposes to amend Equity 7, Section 3(b) to adjust an existing charge for securities priced at less than $1 per share.

Proposed Changes to Equity 7, Section 3(a)

The Exchange proposes to establish two new rebates to member organizations for adding displayed liquidity. First, the Exchange proposes to establish a new credit that will reward a member organization with a credit of $0.0033 per share executed for Quotes/Orders that provide 0.15% or more of total Consolidated Volume during the month. Second, the Exchange proposes to establish a new credit that will reward a member organization with a credit of $0.0032 per share executed for Quotes/Orders that provide 0.07% or more of total Consolidated Volume during the month. The Exchange also proposes to adjust an existing credit from $0.0032 per share executed to $0.0030 per share executed for Quotes/Orders that provide 0.05% or more of total Consolidated Volume during the month. Finally, the Exchange proposes to establish a new supplemental rebate that will reward a member organization with a supplemental credit of $0.00005 per share executed for displayed Quotes/Orders that: (i) provides 0.10% or more of total Consolidated Volume during the prior month; and (ii) provides 0.10% or more of total Consolidated Volume during the month.

The proposed new credits will provide incentives to member organizations to add liquidity to the Exchange. To the extent that the proposed new credits succeed in increasing liquidity on the Exchange, the Exchange hopes that additional liquidity will improve the quality of the market and help to grow it over time. The Exchange offers these credits as a means of improving market quality by providing its members with an incentive to increase liquidity on the Exchange. The Exchange also proposes to reduce an existing credit, as noted above. The Exchange has limited resources available to it to offer its members market-improving incentives, and it allocates those limited resources to those segments of the market where it perceives the need to be greatest and/or where it determines that the incentive is likely to achieve its intended objective.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on April 3, 2023 (SR–PHLX–2023–10). The instant filing replaces SR–PHLX–2023–10, which was withdrawn on April 12, 2023.

Proposed Change to Equity 7, Section 3(b)

The Exchange proposes to adjust the charge to member organizations for accessing liquidity on the Exchange in securities priced at less than $1 per share from the current rate of 0.20% of the total transaction cost to 0.30% of the total transaction cost. Again, the Exchange has limited resources available to it to offer its members market-improving incentives, and it allocates those limited resources to those segments of the market where it perceives the need to be greatest and/or where it determines that the incentive is likely to achieve its intended objective. Accordingly, the Exchange proposes to adjust the charge for accessing liquidity on the Exchange in securities priced at less than $1 per share, as noted above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to amend Equity 7, Section 3(a) to: (i) add two new credit tiers for displayed Quotes/Orders; (ii) adjust an existing credit for displayed Quotes/Orders; and (iii) add a supplemental credit for displayed Quotes/Orders. Taken together, these amendments will better align incentives with the Exchange's needs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. In addition, the proposed new credits would provide incentives to member organizations to add liquidity to the Exchange. To the extent that the proposed new credits succeed in increasing liquidity on the Exchange, the Exchange hopes that additional liquidity will improve the quality of the market and help to grow it over time.

The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to amend Equity 7, Section 3(b) to adjust an existing charge for securities priced at less than $1 per share as the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Those participants that are dissatisfied with the changes to the Exchange's schedule of credits and fees are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed changes to its fees and credits to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposals are reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2023–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2023–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–Phlx–2023–11 and should be submitted on or before May 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09208 Filed 5–1–23; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97386; File No. SR–ISE–2023–09]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Certain Pilot Programs

April 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2023, Nasdaq ISE, LLC (''ISE'' or ''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 extend the pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq-100 Index (''Nasdaq-100'') and the Exchange's nonstandard expirations pilot program, both currently set to expire on May 4, 2023.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to extend 2 pilots, which are both set to expire on May 4, 2023. The Exchange proposes to extend (1) its pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq-100 Index (''NQX Pilot''), and (2) the Exchange's nonstandard expirations pilot program (''Nonstandard Pilot'').

NQX Pilot

ISE filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index (''NQX'') on a twelve month pilot basis.[3] NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on ⅕ of the value of the Nasdaq-100, and are P.M.-settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6)(i) to extend the current NQX Pilot period to November 6, 2023. The NQX Pilot was previously extended with the last extension through May 4, 2023.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of NQX options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the NQX Pilot. The Exchange believes that the proposed extension of the NQX Pilot will not have an adverse impact on capacity.

NQX Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the NQX Pilot and will continue to make public any data or analysis it submits under the NQX Pilot in the future. The Exchange has filed a rule change proposing permanency of the NQX Pilot.[5] The Exchange continues to provide monthly data and has provided additional data in the permanency filing. The Exchange would continue to provide the Commission with ongoing data unless and until the NQX Pilot is made permanent or discontinued.

Nonstandard Pilot

ISE filed a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[6] The Nonstandard Pilot permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. On July 29, 2022, the Commission approved a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program.[7] The Nonstandard Pilot was extended various times with the last extension through May 4, 2023.[8]

Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of- the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on Nasdaq-100 Index options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to Options 4A, Section 12 the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Supplementary Material .07(c) to Options 4A, Section 12 so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through November 6, 2023. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

[3] *See* Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (Approval Order).

[4] *See* Securities Exchange Act Release Nos.86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR–ISE–2019–18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR–ISE–2019–27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR–ISE–2020–18); 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR–ISE–2020–33); 91485 (April 6, 2021), 86 FR 19052 (April 12, 2021) (SR–ISE–2021–05); 93448 (October 28, 2021), 86 FR 60717 (November 3, 2021) (SR–ISE–2021–22); 94632 (April 7, 2022), 87 FR 21940 (SR–ISE–2022–09); and 95992 (October 6, 2022), 87 FR 62163 (October 13, 2022) (SR–ISE–2022–20).

[5] *See* Securities Exchange Act Release No. 96979 (February 24, 2023), 88 FR 13182 (March 2, 2023) (SR–ISE–2023–08).

[6] *See* Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR–ISE–2017–111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[7] *See* Securities Exchange Act Release No. 95393 (July 29, 2022), 87 FR 47807 (August 4, 2022) (SR–ISE–2022–13) (Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program).

[8] *See* Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR–ISE–2019–01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR–ISE–2019–11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR–ISE–2019–28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR–ISE–2020–17); 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR–ISE–2020–34); 91486 (April 6, 2021), 86 FR 19048 (April 12, 2021) (SR–ISE–2021–06); 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021) (SR–ISE–2021–23); 94632 (April 7, 2022), 87 FR 21940 (SR–ISE–2022–09); and 95992 (October 6, 2022), 87 FR 62163 (October 13, 2022) (SR–ISE–2022–20).

Nonstandard Pilot Report

The Exchange submitted a rule change proposing permanency of the Nonstandard Pilot.[9] The Exchange continues to provide monthly data and has provided additional data in the permanency filing. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

NQX Pilot

In particular, the Exchange believes that the NQX Pilot has been successful to date. The Exchange has not encountered any problems with the NQX Pilot. By extending the NQX Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the NQX Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for NQX options, including on the underlying component stocks.

Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the pilot for potential adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

NQX Pilot

NQX options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of the NQX Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the pilot programs prior to their expiration on May 4, 2023, permitting the pilot programs to continue uninterrupted. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[9] *See* Securities Exchange Act Release No. 96979 (February 24, 2023), 88 FR 13182 (March 2, 2023) (SR–ISE–2023–08).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2023–09 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–ISE–2023–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–ISE–2023–09, and should be submitted on or before May 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09210 Filed 5–1–23; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–540, OMB Control No. 3235–0600]

Proposed Collection; Comment Request; Extension: Rule 611

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 611 (17 CFR 242.611) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

On June 9, 2005, effective August 29, 2005 (*see* 70 FR 37496, June 29, 2005), the Commission adopted Rule 611 of Regulation NMS under the Exchange Act to require any national securities exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker, and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of a transaction in its market at a price that is inferior to a bid or offer displayed in another market at the time of execution (a ''trade-though''), absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. Without this collection of information, respondents would not have a means to enforce compliance with the Commission's intention to prevent trade-throughs pursuant to the rule.

There are approximately 235 respondents [1] per year that will require an aggregate total of approximately 14,100 hours to comply with this Rule. It is anticipated that each respondent will continue to expend approximately 60 hours annually: two hours per month of internal legal time and three hours per month of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with Rule 611. The estimated cost for an in-house attorney is $489 per hour and the estimated cost for an assistant compliance director in the securities industry is $432 per hour. Therefore the estimated total internal cost of compliance for the annual hour burden is as follows: [(2 legal hours × 12 months × $489) × 235] + [(3 compliance hours × 12 months × $432) × 235] = $6,412,680.[2]

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 3, 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.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

[1] This estimate includes 16 national securities exchanges that are equity securities exchanges. The estimate also includes an estimated 187 firms that are over-the-counter market makers or exchange market makers, as well as an estimated 32 alternative trading systems that trade NMS stocks.

[2] The total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an assistant compliance director. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and then adjusted for inflation.

Dated: April 26, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09201 Filed 5–1–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97385; File No. SR–Phlx–2023–13]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Certain Pilot Programs

April 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2023, Nasdaq PHLX LLC (''Phlx'' or ''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 extend the pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index (''Nasdaq-100'') and the Exchange's nonstandard expirations pilot program, both currently set to expire on May 4, 2023.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to extend 2 pilots, which are both set to expire on May 4, 2023. The Exchange proposes to extend (1) pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index (''XND Pilot''), and (2) the Exchange's nonstandard expirations pilot program (''Nonstandard Pilot'').

XND Pilot

Phlx filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Micro Index Options (''XND'') on a pilot basis.[3] XND options trade independently of and in addition to NDX options, and the XND options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, XND options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for XND options mirror in all respects those of the NDX options contract already listed on the Exchange, except that XND options are based on 1/100th of the value of the Nasdaq-100 Index, and are P.M.-settled pursuant to Options 4A, Section 12(a)(5).

The Exchange proposes to amend Phlx Options 4A, Section 12(a)(6) to extend the current XND Pilot period to November 6, 2023. This pilot was previously extended and is currently extended through May 4, 2023.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of XND options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in XND options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the XND Pilot. The Exchange believes that the proposed extension of the XND Pilot will not have an adverse impact on capacity.

XND Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the XND Pilot and will continue to make public any data or analysis it submits under the XND Pilot in the future. The Exchange has filed a rule change proposing permanency of the XND Pilot.[5] The Exchange continues to provide monthly data and has provided additional data in the permanency filing. The Exchange would continue to provide the Commission with ongoing data unless and until the XND Pilot is made permanent or discontinued.

Nonstandard Pilot

On December 15, 2017, the Commission approved a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates (''Nonstandard Pilot'').[6] The Nonstandard Pilot permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. On July 29, 2022, the Commission approved a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program.[7] The Nonstandard Pilot was extended various times and is currently extended through May 4, 2023.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR–Phlx–2021–07) (Approval Order).

[4] *See* Securities Exchange Act Release No. 93447 (October 28, 2021), 86 FR 60719 (November 3, 2021) (SR–Phlx–2021–66); 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR–Phlx–2022–16); and 95993 (October 6, 2022), 87 FR 62161 (October 13, 2022) (SR–Phlx–2022–39).

[5] *See* Securities Exchange Act Release No. 96980 (February 24, 2023), 88 FR 13161 (March 2, 2023) (SR–Phlx–2023–07).

[6] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (Notice of Filing of Amendment No. 2, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[7] See Securities Exchange Act Release No. 95391 (July 29, 2022), 87 FR 47797 (August 4, 2022) (SR–Phlx–2022–22) (Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program).

[8] *See* Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21,

Continued

Pursuant to Phlx Options 4A, Section 12(b)(5)(A) the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on Nasdaq-100 Index options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Options 4A, Section 12(b)(5)(C) so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through November 6, 2023. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

Nonstandard Pilot Report

The Exchange submitted a rule change proposing permanency of the Nonstandard Pilot.[9] The Exchange continues to provide monthly data and has provided additional data in the permanency filing. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

XND Pilot

In particular, the Exchange believes that the XND Pilot has been successful to date. The Exchange has not encountered any problems with the XND Pilot. By extending the XND Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the XND Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for XND options, including on the underlying component stocks.

Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the pilot for potential adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

XND Pilot

XND options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of XND will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public

2018) (SR–Phlx–2018–80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR–Phlx–2019–13); 87381 (October 22, 2019), 84 FR 57788 (October 28,2 019) (SR–Phlx–2019–43); 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR–Phlx–2020–24); 90256 (October 22, 2020), 85 FR 68393 (October 28, 2020) (SR–Phlx–2020–48); 91484 (April 6, 2021), 86 FR 19050 (April 12, 2021) (SR–Phlx–2021–21); 93464 (October 29, 2021), 86 FR 60952 (November 4, 2021) (SR–Phlx–2021–65); 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR–Phlx–2022–16); and 95993 (October 6, 2022), 87 FR 62161 (October 13, 2022) (SR–Phlx–2022–39).

[9] *See* Securities Exchange Act Release No. 96980 (February 24, 2023), 88 FR 13161 (March 2, 2023) (SR–Phlx–2023–07).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the pilot programs prior to their expiration on May 4, 2023, permitting the pilot programs to continue uninterrupted. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2023–13 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–Phlx–2023–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–Phlx–2023–13, and should be submitted on or before May 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09209 Filed 5–1–23; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12), (59).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17897 and #17898; California Disaster Number CA–00382]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Hoopa Valley Tribe

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Hoopa Valley Tribe (FEMA–4707–DR), dated 04/25/2023.

Incident: Severe Winter Storms and Mudslides.

Incident Period: 02/14/2023 through 03/05/2023.

DATES: Issued on 04/25/2023.

Physical Loan Application Deadline Date: 06/26/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/25/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/25/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Hoopa Valley Tribe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17897 B and for economic injury is 17898 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–09238 Filed 5–1–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12063]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Life Cycles: The Materials of Contemporary Design'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Life Cycles: The Materials of Contemporary Design'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW, (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–09263 Filed 5–1–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

TRADE AND DEVELOPMENT AGENCY

[Docket Number: 230417–0103]

Climate Adaptation Export Competitiveness Request for Information

AGENCY: International Trade Administration, Department of Commerce, and U.S. Trade and Development Agency.

ACTION: Request for public comments; Climate Adaptation Export Competitiveness Request for Information.

SUMMARY: This notice seeks public comments on climate adaptation and resilience-related technologies and services to enhance the U.S. government's understanding of opportunities and challenges for U.S. exporters in these sectors. The comments will be used by the U.S. Department of Commerce's International Trade Administration (ITA) and the U.S. Trade and Development Agency (USTDA) to align U.S. government trade promotion and trade policy activities to those sectors and markets that present the greatest opportunities for exporters of climate adaptation and resilience-related technologies and services, as well as to address relevant trade barriers and promote U.S. industry competitiveness.

DATES: Comments are requested no later than June 30, 2023.

ADDRESSES: You may submit electronic comments, identified by Docket Number: 230417–0103 via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter Docket Number: 230417–0103 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

If you are unable to comment via *regulations.gov,* you may contact *climate@trade.gov* for instructions on submitting your comment.

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 ITA or USTDA. Comments received before the deadline are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change.

Commenters should include the name of the person or organization filing the comment. All personal identifying information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. ITA and USTDA will not accept anonymous comments.

For those seeking to submit confidential business information (CBI) for government use only, please clearly mark such submissions as CBI and submit an accompanying redacted version to be made public.

FOR FURTHER INFORMATION CONTACT:

ITA, Anna Cron, International Trade Administration; 1401 Constitution Ave. NW, Washington, DC 20230; telephone: (202) 843–2376; email: *climate@trade.gov.* Please direct media inquiries to ITA's Office of Public Affairs (202) 482–3809 or *publicaffairs@trade.gov.*

USTDA, Eric Haxthausen, U.S. Trade and Development Agency; 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209; telephone: (703) 875–4357; email: *climateadaptation@ustda.gov.* Please direct media inquiries to Paul Marin in USTDA's Office of Public Affairs at (703) 875–4357.

SUPPLEMENTARY INFORMATION: On January 27, 2021, President Biden issued Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad'' (86 FR 7619). E.O. 14008 puts climate considerations at the forefront of U.S. foreign policy and national security. The E.O. also directs agencies that engage in extensive international work to develop strategies and implementation plans for integrating climate considerations into their overseas programming. During the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC COP26) in November 2021, President Biden announced the launch of the President's Emergency Plan for Adaptation and Resilience (PREPARE), a whole-of-government initiative that serves as the cornerstone of the U.S. government response to addressing the increasing

impacts of the global climate crisis to enhance global stability and security.

The increased focus on climate adaptation and resilience is timely as recent analyses have identified the need for trillions of dollars in annual infrastructure investments over the coming years and decades. This infrastructure will need to accommodate new climate conditions, and specific investments will be needed to support communities and businesses in adapting to new climate-related risks. Mindful of these needs and the opportunity to spur U.S. innovation and create well-paying jobs in addressing them, ITA and USTDA, together with their partner agencies across the U.S. government, seek to expand climate adaptation and resilience-related programming to support sustainable infrastructure needs while promoting the export of U.S. technologies and services.

In support of PREPARE and their trade-focused missions, ITA and USTDA are requesting public comments on the export competitiveness of climate adaptation and resilience-related technologies and services, and potential opportunities and challenges in the export of climate adaptation and resilience-related solutions. Both agencies are interested to identify possible actions the Federal government could take to foster U.S. export competitiveness in this area.

ITA

ITA strengthens the competitiveness of U.S. industry, promotes trade and investment, and ensures fair trade through the rigorous enforcement of our trade laws and agreements. ITA works to improve the global business environment and helps U.S. organizations of all sizes to compete at home and abroad. To advance the Administration's climate and trade agenda, ITA focuses on four strategic objectives: (1) Promoting U.S. exports and inward investment; (2) Removing and preventing trade barriers; (3) Enforcing trade laws and agreements; and (4) Supporting U.S. companies competing for foreign projects. Through its more than 100 U.S. field offices nationwide and 80 offices across the globe, ITA offers companies a full range of services to plan, assess, promote, and expand business around the world.

ITA is working to identify key issues influencing the deployment of U.S. climate solutions and to promote U.S. exports to address climate change. The stakeholder input sought through this notice will inform ITA's export promotion, commercial diplomacy, and trade compliance efforts, as well as assist in the development of trade promotion programs aimed to support U.S. exporters of climate adaptation and resilience-related technologies and services.

USTDA

USTDA helps companies create U.S. jobs through the export of U.S. goods and services for priority infrastructure projects in emerging economies. USTDA links U.S. businesses to export opportunities by funding project preparation and partnership building activities that develop sustainable infrastructure and foster economic growth in partner countries. USTDA achieves its mission by funding feasibility studies, technical assistance and pilot projects that integrate U.S. private sector innovation into infrastructure projects at the critical early stages when design choices and technology options are determined. The Agency also connects overseas project sponsors with U.S. partners through its reverse trade missions, industry conferences and expert workshops. USTDA's dual mission of facilitating overseas economic development and U.S. exports is unique among Federal agencies. In carrying out its mission, the Agency places particular emphasis on vital economic sectors including clean energy, transportation, digital, and healthcare infrastructure.

USTDA is seeking to integrate climate adaptation and resilience considerations into its programming across these priority sectors and to identify specific programming opportunities to support the export of U.S. technologies and services that strengthen developing and middle-income countries' ability to prepare for and respond to external shocks and stresses associated with climate change. The stakeholder input sought through this notice will inform USTDA's efforts to develop project preparation activities including feasibility studies, technical assistance, and pilot projects, as well as partnership-building activities including reverse trade missions, industry events, and expert workshops, to link U.S. companies to climate adaptation and resilience-related export opportunities while fostering climate adaptation and sustainable infrastructure development in developing and middle-income countries.

Scope

''Climate adaptation'' is a broad term that can encompass a range of technologies, services and activities used to address a variety of issues relating to the effects and impacts of climate change. The UNFCCC defines climate adaptation as ''human-driven adjustments in ecological, social, or economic systems or policy processes, in response to actual or expected climate stimuli and their effects or impacts.'' Put simply, climate adaptation refers to strengthening the capacity of individuals, communities, assets and/or systems to withstand current or expected climate shocks or stressors.

''Climate resilience'' can be defined as the ability to prepare for and recover from the impacts of climate change. For the purpose of this request for public comment, ITA and USTDA are focused on both established and emerging technologies, and goods and services, that can contribute to the adaptive capacity and resilience of foreign partners to manage shocks and stresses associated with climate change.

''Climate adaptation and resilience-related technologies and services'' span a range of industries and sectors including the following, among others:

- Emergency response and preparedness, including early warning systems;
- Professional engineering and design services to improve infrastructure resilience;
- Hydro-meteorological systems and forecasting, mapping, data analysis, and other climate information services;
- Energy resilience (which may be provided or enhanced by minigrids, microgrids, electricity grid weatherization and monitoring, energy efficiency and demand-side management, energy storage, or fuel cells, among other technologies and services);
- Environmental technologies, such as water supply, wastewater treatment, solid waste management, and environmental remediation;
- Information and communications technology (ICT) for resilient and redundant communication systems, digital and ICT application solutions that support resilient climate-smart communities (for example, to design or implement urban adaptation initiatives, or improve data storage resilience), including cloud computing to make data available for use and real-time engagement by multiple simultaneous users;
- Water use efficiency, water storage and production solutions, and information technology applications for water and wastewater operators;
- Resilient transportation systems that are adapted to respond to direct and indirect consequences of climate change, such as extreme weather and associated population movements;
- Coastal and flood protection;

- Technologies and services that facilitate the adaptation of marine ecosystems to future climate conditions, including future ocean temperature and chemistry regimes, or that enable the sustainable use of ocean resources and the ocean economy under future climate conditions;
- Climate-smart food systems, including agriculture, aquaculture, and fisheries;
- Infrastructure and engineering services and sustainable building materials, including building assessment and weatherization, and nature-based or other innovative or traditional infrastructure solutions, designed to provide protection against anticipated climate impacts;
- Capital markets solutions including green bonds and technology for collecting and aggregating data (including ESG data) related to or of value for adaptation and climate resilience;
- Innovative insurance products that address climate adaptation and resilience concerns; and
- Sustainable lending and financing products that support financing climate adaptation and improved climate resilience.

For the purpose of this request for public comment, ''competitiveness'' entails the capacity to produce and deploy affordable, reliable, and accessible technologies and compete in global markets. USTDA and several of both agencies' interagency partners are particularly interested in climate adaptation and resilience-related technologies and services that could represent significant opportunities for U.S. companies exporting to emerging markets (*i.e.,* developing and middle-income countries).

This request for public comments supports the work of the Trade Promotion Coordinating Committee (TPCC) to coordinate U.S. government export promotion activities, including activities in support of U.S. exports of climate and clean technologies and services. The TPCC is an interagency committee chaired by the Secretary of Commerce. It was established under the Export Enhancement Act of 1992 to provide a unifying framework to coordinate the export promotion and export financing activities of the U.S. government, and to develop a government-wide strategic plan for carrying out such programs.

Request for Written Comments

Instructions: This notice is intended to improve ITA's and USTDA's understanding of U.S. private sector interests, capabilities, and concerns with respect to exports of climate adaptation and resilience-related technologies and services. This notice is a general solicitation for public comments and further sets forth specific topics for discussion and comment for both agencies to improve their understanding of the current technological landscapes. ITA and USTDA seek broad input from all interested stakeholders, including U.S. industry, researchers, academia, and civil society. Commenters are encouraged to address any or all of the following questions and may respond in terms of climate adaptation and resilience broadly, or in terms of specific sub-sectors, technologies, and services. To the extent commenters choose to respond to the specific questions asked, responses may be formatted as the commenter prefers.

Comments will be reviewed by ITA and USTDA staff and contractors and may be used to inform agency priorities and programming. ITA and USTDA intend to share the information received through this request with partner Federal agencies, consistent with the Biden-Harris Administration's whole-of-government approach to implement PREPARE and Administration efforts to support U.S. exports. Accordingly, responses will be of potential interest to a broader set of U.S. government agencies working on climate adaptation, climate resilience, and export promotion.

Questions

Opportunities

1. What climate adaptation and resilience-related technologies and services offer the most significant immediate opportunities for U.S. exports to foreign countries or regions, including developing and middle-income countries?

2. What climate adaptation and resilience-related technologies and services do not currently offer significant immediate opportunities for U.S. exports to foreign countries or regions, including developing and middle-income countries, but may offer such opportunities within the next five to ten years?

3. Do the needs of climate adaptation and resilience-related services exporters (including software and digital service providers) differ from exporters of manufactured products? If so, how?

Challenges

4. What are the principal factors (*i.e.,* economic, technical, regulatory, etc.), especially in developing and middle-income export markets, that could pose significant barriers to U.S. industry's competitiveness with respect to U.S. exports of climate adaptation and resilience-related technology and services? What changes are necessary for U.S. private sector to enter these markets? What factors inhibit expansion and growth in those markets? Please consider challenges pertaining to existing and emerging technologies and services, and to established and developing markets.

5. What are the principal factors (*i.e.,* economic, technical, regulatory, etc.) that inhibit U.S. industry competitiveness in climate adaptation and resilience-related sectors or technologies in which the U.S. does not currently have a competitive domestic industry?

6. Which countries' companies are the main competitors for adaptation and resilience-related technologies and services? What is the nature of the government assistance they may receive? How might the U.S. government level the playing field for U.S. companies facing foreign competition?

U.S. Government Solutions

7. What are the most useful and effective existing tools or resources offered by the U.S. government to reduce or remove challenges, risks, and barriers to help position U.S. climate adaptation and resilience-related technologies for competitiveness in the global market?

8. How can existing tools or resources offered by the U.S. government be improved or coordinated to increase their effectiveness or make them more accessible to U.S. companies' climate adaptation and resilience-related technologies or services?

9. What are potentially useful new actions the U.S. government could take, or information or assistance the U.S. government could provide domestically, or through engagement with foreign countries and multilateral international organizations, to reduce or remove challenges, risks, and barriers or otherwise help position U.S. climate adaptation and resilience-related technologies and services for export to foreign countries or regions, including developing and middle-income countries?

10. Which foreign countries or regions, including developing and middle-income countries, present the greatest market opportunities for U.S. exports of climate adaptation and resilience-related technologies and services or should be prioritized for engagement by the U.S. government? (Note that USTDA's focus is on

infrastructure development in developing and middle-income countries; other Federal departments and agencies including ITA may be able to engage in a wider array of countries, depending on their respective mandates and authorities.)

Scope

11. In addition to the illustrative list of climate adaptation and resilience-related technologies and services identified above, what other adaptation or resilience-related technologies or services with opportunities for U.S. exports of goods and services to foreign countries or regions, including low and middle-income countries exist, if any? What other technologies or services U.S. industry offers that increase resilience to climate-related shocks and stresses or support adaptation to future climate conditions are not typically considered part of ''climate adaptation'' but should be?

Other

12. What additional issues or challenges related to U.S. exports and competitiveness of climate adaptation and resilience-related technologies and services not addressed by these questions do you believe would be helpful for USTDA and other Federal agencies to understand? What would be the most critical actions the government could take to address these issues?

Dated: April 24, 2023.

Man K. Cho,

Deputy Director, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce.

Eric M. Haxthausen,

Senior Advisor for Climate, Partnerships, and Innovation, U.S. Trade and Development Agency.

[FR Doc. 2023–09051 Filed 5–1–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request To Release Airport Property at the Pueblo Memorial Airport, Pueblo, Colorado

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

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release and sale of a 12.56 acre parcel of land at the Pueblo Memorial Airport.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Mr. John Sweeney, Lead Planner, Denver Airports District Office, *john.sweeney@faa.gov,* (303) 342–1263.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Pedroza, Director of Aviation, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, CO 81001, *gpedroza@pueblo.us,* (719) 553–2744; or John Sweeney, Lead Planner, Denver Airports District Office, 26805 E. 68th Ave. Suite 224, Denver, CO, 80249, *john.sweeney@faa.gov,* (303) 342–1263. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release non-aeronautical property at the Pueblo Memorial Airport under the provisions of 49 U.S.C. 47107(h)(2). The proposal consists of 12.56 acres of land located on the Southwest side of the airport, shown as Parcel 12 on the Airport Layout Plan. The parcel lies inside the Pueblo Memorial Airport Industrial Park, North of William White Blvd. The FAA concurs that the parcel is no longer needed for airport purposes. The proposed use of this property is compatible with existing airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, as published in the **Federal Register** on February 16, 1999.

Issued in Denver, Colorado on April 25, 2023.

John P. Bauer,

Manager, Denver Airports District Office.

[FR Doc. 2023–09270 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0010]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2023–0010 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Krolak, Senior Hydraulic Engineer, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Culvert Removal, Replacement, and Restoration Grant Program (Culvert AOP Program).

Background: Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection. In compliance with the Paperwork Reduction Act of 1995, the DOT provides notice that it will submit an information collection requests (ICR) to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. Upon receiving the requested six-month emergency approval by OMB, the Office of the Secretary (OST) will follow the normal PRA procedures to obtain extended approval for this proposed information collection. This collection involves applicants submitting an application for discretionary grant funding under the ''National Culvert Removal, Replacement, and Restoration Grant Program'' (Culvert AOP Program) established by the Infrastructure Investment and Jobs Act of 2021, November 15, 2021, ''Bipartisan Infrastructure Law'', or ''BIL''. DOT is requesting emergency approval due to the urgency of making the associated

funds available to applicants that meet the eligibility requirements under the law. The continued viability of these funds is critical in supporting the transportation infrastructure and fish passage needs across the United States.

Respondents: States, units of local government, and an Indian Tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Expected Number of Respondents: 200.

Frequency: One-time application, to be followed by project agreement execution, reimbursement of funds, reporting, and project closeout.

Estimated Average Burden Hours per Response: 19.

Estimated Total Annual Burden Hours: 8,600.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 23 U.S.C. 134 and 135; and 23 CFR chapter 1, subchapter E, part 450.

Dated: April 27, 2023.

Michael Howell,

FHWA Information Collection Officer.

[FR Doc. 2023–09312 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0012]

Agency Information Collection Activities: Approval Request

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection. In compliance with the Paperwork Reduction Act of 1995, the Department of Transportation (DOT) provides notice that it will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for approval of a proposed information collection. This collection involves applicants to submit a proposal for discretionary grant funding, under the Charging and Fueling Infrastructure Program established by the Infrastructure Investment and Jobs Act of 2021, November 15, 2021, ''Bipartisan Infrastructure Law'', or ''BIL''. FHWA is requesting emergency approval due to the urgency of making the associated funds available to applicants that meet the eligibility requirements under the law. The continued viability of these funds is critical in supporting the transportation infrastructure needs across the United States.

DATES: Please submit comments by July 3, 2023.

ADDRESSES: You may send comments within 60 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2023–0012.

FOR FURTHER INFORMATION CONTACT: Gary Jensen, Director Office of Natural Environment, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This is a request for Office of Management and Budget (OMB) emergency clearance for a new information collection request (ICR) to enable the Department of Transportation (DOT) Federal Highway Administration (FHWA) to implement the Charging and Fueling Infrastructure Discretionary Grant Program. This program provides two grant categories: (1) Community Program and (2) Corridor Program. The CFI was authorized in the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Act) (Pub. L. 117–58) on November 15, 2021. This historic Act is a once-in-a-generation opportunity to support transformational investments in our Nation's transportation infrastructure that will create good jobs, modernize our infrastructure, improve safety, tackle the climate crisis, and invest in communities that have too often been left behind. The program will strategically deploy publicly accessible electric vehicle charging infrastructure, and hydrogen, propane, or natural gas fueling infrastructure along designated alternative fuel corridors or in community locations that will be accessible to all drivers of electric vehicles, hydrogen vehicles, propane vehicles, and natural gas vehicles.

The CFI Grant Program is critical to enabling eligible entities to accelerate an electrified and alternative fuel transportation system that is convenient, affordable, reliable, equitable, and safe. This program will support a future where everyone can ride and drive electric and have alternative fuel options. The FHWA is seeking to award CFI projects that proactively address emission reductions, infrastructure reliability, development of a skilled and diverse workforce, community engagement and equity including the decades of underinvestment in disadvantaged communities—communities that are underserved and overburdened.

The statutory requirements of the CFI Grant Program are found under Subtitle D section 11401 of the BIL and codified at 23 U.S.C. 151. In BIL, Congress authorized funding for five Fiscal Years (including FY 2022/2023), totaling up to $2.5B (FY 2022 $300M, FY 2023 $400M, FY 2024 $500M, FY 2025 $600M, and FY 2026 $700M) to CFI eligible projects. For FY 2022/2023, a total of $700 M is available under one NOFO for awards under two funding categories: Community Program and Corridor Program.

The statute defines eligible applicants for the CFI Grant Program as State or political subdivision of a State; a metropolitan planning organization; a unit of local government; a special purpose district or a public authority with a transportation function; an Indian Tribe; a territory of the United States; or an authority, agency, or instrumentality of, or an entity owned by, 1 or more entities described above; a group of entities as described above; and a State or local authority with ownership of publicly accessible transportation facilities (Community Program only).:

Title: Charging and Fueling Infrastructure Discretionary Grant Program.

Expected Number of Respondents: 550.

Frequency: Application submission and project agreement execution will occur one time while project management will occur over three years.

Estimated Average Burden per Response: $3,280 (application submission, project agreement execution, and 3 years of project management).

Estimated First Year Burden: $1,408,000.

Abstract: On November 15, 2021, the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117–58).

''Bipartisan Infrastructure Law (BIL)'' was enacted. Section 1118 established the Charging and Fueling Infrastructure (CFI) Program.

Application Stage

In order to be considered to receive a grant, a project sponsor must submit an application to FHWA containing a project narrative, as detailed in the Notice of Funding Opportunity. The application should contain the information necessary for the FHWA to determine that the project satisfies eligibility requirements as required by law.

The FHWA will receive applications from project sponsors and reports from grant recipients electronically via email and via websites upon approval from OMB. In order to minimize the burden on applicants, OMB approved standard forms are being used to collect information where possible. Such standard forms include the Application for Federal Assistance (SF–424), available online at *https://apply07.grants.gov/apply/forms/sample/SF424_2_1-V2.1.pdf,* and the post-award Federal Financial Reports form (SF–425), available online at *https://apply07.grants.gov/apply/forms/sample/SF425_2_0-V2.0.pdf.*

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at *49 CFR 7.17.* Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA. This grant program is voluntary. No entity eligible to apply is required to participate. However, applicants will be expected to provide the following information.

The FHWA will collect the following information:

Legal Name of the Applicant (*i.e.,* the legal name of eligible entity) as well as any other identities under which the applicant may use.

- Address, telephone, and email contact information for the applicant.
- Name and title of the authorized representative of the applicant (who will attest to the required certifications).
- DOT may also require the identity of external parties involved in preparation of the application, who may be assisting the applicant that is applying for assistance under this program.
- The specific statutory criteria that the applicant and project meet for eligibility under this program.

Eligible Applicants

The statute defines eligible applicants for the CFI Corridor Grants as: (1) a State or political subdivision of a State; (2) a metropolitan planning organization; (3) a unit of local government; (4) a special purpose district or a public authority with a transportation function; (5) an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)); (6) a territory of the United States; (7) an authority, agency, or instrumentality of, or an entity owned by, 1 or more entities listed above; or (8) a group of entities as described above in 1–7.

The statute defines eligible applicants for the CFI Community Grants as a group of entities as listed above in the Corridor Grant Program and a State or local authority with ownership of publicly accessible transportation facilities.

Eligible Projects

The statute defines eligible projects to include:

Eligible projects	
Community grants	Corridor grants
Project that is expected to reduce greenhouse gas emissions and to expand or fill gaps in access to publicly accessible electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure. (23 U.S.C. 151 (f)(8)((D)).	Acquisition and installation of publicly accessible electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure that is directly related to the charging or fueling of a vehicle. (23 U.S.C. 151(f)(6)(A)).
Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities. (23 U.S.C. 151(f)(8)(D)(i)).	Operations Assistance.
	Operating assistance for the first 5 years of operations after the installation of publicly available electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure while the facility transitions to independent system operations. (23 U.S.C. 151(f)(6)(C)).

Eligible projects	
Community grants	Corridor grants
The acquisition and installation of electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure that is directly related to the charging or fueling of a vehicle, including any related construction or reconstruction and the acquisition of real property directly related to the project, such as locations described in section 3.d of this NOFO, to expand access to electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure. 23 U.S.C. 151(f)(8)(ii)).	Traffic Control Devices.[1] Acquisition and installation of traffic control devices located in the right-of-way to provide directional information to publicly accessible electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure acquired, installed, or operated with the grant. (23 U.S.C. 151(f)(6)(D)(i)). Use of funds for the acquisition and installation traffic control devices must be for the acquisition and installation of publicly accessible electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure. (23 U.S.C. 151(f)(6)(D)(ii)).

[1] Any traffic control device or on-premises sign acquired, installed, or operated with a grant under this subsection shall comply with: (i) the Manual on Uniform Traffic Control Devices, if located in the right-of-way; and (ii) other provisions of Federal, State, and local law, as applicable. (23 U.S.C. 151(f)(9)(B))).

Statutory Selection Considerations, Priories and Additional Considerations

The chart below outlines the Statutory Section Criteria that will be used for the Community Program and the Corridor Program under the CFI Program Grants.

Selection criteria	Community program	Corridor program
Secretarial Statutory Selection Considerations 23 U.S.C. 151(f)(5)		✓
Secretarial Statutory Selection Priorities 23 U.S.C. 151(f)(8)(F)	✓	
Secretarial Statutory Additional Considerations 23 U.S.C. 151(f)(8)(G)	✓	

Secretarial Statutory Selection Considerations—Corridor Program Only

The following are Secretarial Statutory Selection Considerations for the CFI Program, which are unique to the Corridor Program.

(1) The extent to which the application would improve alternative fueling corridor networks by (i) converting corridor-pending corridors to corridor-ready corridors or (ii) in the case of corridor-ready corridors, providing redundancy (aa) to meet excess demand for charging or fueling infrastructure; or (bb) to reduce congestion at existing charging or fueling infrastructure in high-traffic locations (23 U.S.C. 151(f)(5)(A)(i)(I) and (II) (aa) and (bb)).

(2) The extent to which the application would meet current or anticipated market demands for charging or fueling infrastructure (23 U.S.C. 151(f)(5)(A)(ii)); The extent to which the application would support a long-term competitive market for electric vehicle charging, or hydrogen, propane, or natural gas fueling infrastructure, and does not significantly impair existing charging and fueling infrastructure providers (23 U.S.C. 151(f)(5)(A)(iv)); and The extent to which the application would provide access to electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure in areas with a current or forecasted need (23 U.S.C. 151(f)(5)(A)(v)).

(3) The extent to which the application would enable or accelerate the construction of charging or fueling infrastructure that would be unlikely to be completed without Federal assistance (23 U.S.C. 151(f)(5)(A)(iii)).

(4) The extent to which the application would deploy electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure for medium- and heavy-duty vehicles (including along the National Highway Freight Networkestablished under section 167(c)) and in proximity to intermodal transfer stations (23 U.S.C. 151(f)(5)(A)(vi).

(5) The extent to which the application would ensure, to the maximum extent practicable, geographic diversity among grant recipients to ensure that electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure is available throughout the United States (23 U.S.C. 151(f)(5)(B)).

(6) Whether the private entity that the eligible entity contracts with an eligible project (i) submits to the Secretary the most recent year of audited financial statements and (ii) has experience in installing and operating electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure(23 U.S.C. 151(f)(5)(C)(i) and (ii)).

(7) Whether, to the maximum extent practicable, the eligible entity and the private entity that the eligible entity contracts for an eligible project enter into an agreement (i) to operate and maintain publicly available electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas infrastructure and (ii) that provides a remedy and an opportunity to cure if the requirements described in clause (i) are not met (23 U.S.C. 151(f)(5)(D)(i) and (ii)).

Secretarial Statutory Selection Priorities—Community Program Only

The following are Secretarial Statutory Selection Priorities for the CFI Program, which are unique to the Community Program.

(1) Priority goes to projects that expand access to electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling

infrastructure within rural areas (23 U.S.C. 151(f)(8)(F)(i));

(2) Priority goes to projects that expand access to electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure within low- and moderate-income neighborhoods (23 U.S.C. 151(f)(8)(F)(ii)); and

(3) Priority goes to projects that expand access to electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, or natural gas fueling infrastructure within communities with a low ratio of private parking spaces to households or a high ratio of multiunit dwellings to single family homes, as determined by the Secretary (23 U.S.C. 151(f)(8)(F)(iii)).

Secretarial Statutory Additional Considerations—Community Program Only

The following are Secretarial Statutory Additional Considerations for the CFI Program which are unique to the Community Program.

(1) The extent to which the project contributes to geographic diversity among eligible entities, including achieving a balance between urban and rural communities (23 U.S.C. 151(f)(8)(G)(i)); and

(2) The extent to which the project meets current or anticipated market demands for charging or fueling infrastructure, including faster charging speeds with high-powered capabilities necessary to minimize the time to charge or refuel current and anticipated vehicles (23 U.S.C. 151(f)(8)(G)(ii)).

Application and/or Project Narrative

- A description of how the project aligns with the project merit criteria and statutory application information.
- DOT has designated five project merit criteria which will be used to evaluate and rate the responsiveness of an application to the statutory required selection considerations will evaluate projects using the following criteria: (1) Safety, (2) Climate Change, Resilience and Sustainability, (3) Equity and Justice40, (4) Workforce Development, Job Quality, and Wealth Creation, and (5) CFI Program Vision.
- A detailed project budget, including the grant request amount, other Federal funds, and non-Federal contributions. DOT requires this information to calculate the cost share requirements outlined in statute. Applicants will be required to provide supporting documentation in sufficient detail to describe the project cost breakdown.
- Project Readiness.
- Other identification numbers, such as their Data Universal Numbering System (DUNS) number, Unique Entity Identifier under *2 CFR part 25,* etc. All applicants will be required to have pre-registered with the System for Award Management (SAM) at *https://sam.gov/SAM/.*

Grant Agreement Stage

The grant agreement is an agreement between FHWA and the recipient. If a grant recipient under the CFI is a State Department of Transportation (State DOT), or if a State DOT serves as a pass-through entity to a non-State DOT recipient, CFI funds will be awarded upon the execution of a project agreement: a type of grant agreement for administration of funds allocated to a State DOT in the FHWA Fiscal Management Information System (FMIS).

If a grant recipient under the CFI is any other eligible applicant (*i.e.,* not a State DOT), CFI funds will be awarded upon the execution of a grant agreement between FHWA and the recipient. A non-State DOT selected to receive a CFI award may elect to have a State DOT administer the CFI funds, subject to agreement with the State DOT.

Project Management Stage

The reporting requirements under this stage are necessary to ensure the proper and timely expenditure of Federal funds within the scope of the approved project. The requirements comply with the Common Grant Rule. During the project management stage, the grantee will complete Quarterly Progress and Monitoring Reports to ensure that the project budget and schedule will be maintained to the maximum extent possible, that the project will be completed with the highest degree of quality, and that compliance with Federal regulations will be met. The FHWA may also require substantive requirements of the report include: The project's overall status; project significant activities and issues; action items/outstanding issues; project scope overview; project schedule; project cost; an SF–425 Federal Financial Report; and certifications. This reporting requirement will greatly reduce the need for on-site visits by staff.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Respondents: 2,050.

Estimated Average Burden for First Year per Response: 46.

Estimated Total Annual Burden: 25,600.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: April 27, 2023.

Michael Howell,

Information Collection Officer.

[FR Doc. 2023–09314 Filed 5–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0209]

Women of Trucking Advisory Board (WOTAB); Notice of Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the WOTAB.

DATES: The meeting will be held on Tuesday, May 16, 2023, from 10 a.m. to 4:30 p.m. ET. Requests for accommodations for a disability must be received by Tuesday, May 9. Requests to submit written materials for consideration during the meeting must be received no later than Tuesday, May 9.

ADDRESSES: The meeting will be held virtually for its entirety. Please register in advance of the meeting at *www.fmcsa.dot.gov/wotab.* Copies of WOTAB task statements and an agenda for the entire meeting will be made available at *www.fmcsa.dot.gov/wotab* at least 1 week in advance of the meeting. Once approved, copies of the meeting minutes will be available at the website following the meeting. You may visit the WOTAB website at *www.fmcsa.dot.gov/wotab* for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Designated Federal Officer, WOTAB, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, *wotab@dot.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

WOTAB was created under the Federal Advisory Committee Act (FACA) in accordance with section 23007(d)(1) of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58), which requires the Federal Motor

Carrier Safety Administration (FMCSA) to establish WOTAB. WOTAB will review and report on policies that provide education, training, mentorship, and outreach to women in the trucking industry and identify barriers and industry trends that directly or indirectly discourage women from pursuing and retaining careers in trucking.

WOTAB operates in accordance with FACA under the terms of the WOTAB charter, filed February 11, 2022.

II. Agenda

The agenda will cover the following topics:

- WOTAB will review and conclude its deliberations on Task 22–1, Crime Prevention for Women Drivers of Commercial Motor Vehicles, and finalize its report.
- WOTAB will begin consideration of Task 23–1, Barriers to the Participation of Women Minority Groups and Women Who Live in Rural, Suburban, or Urban Areas Women to Entering the Trucking Workforce.
- For each topic, FMCSA will include presentations by Agency experts and those in the field under discussion.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website is required.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Tuesday, May 9.

Oral comments from the public will be heard during designated comment periods at the discretion of the WOTAB chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to WOTAB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–09250 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for Rail Research and Development Center of Excellence

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO or notice).

SUMMARY: This notice details the application requirements and procedures to obtain funding to establish and maintain a Rail Research and Development Center of Excellence. This NOFO solicits applications for the Rail Research and Development Center of Excellence funds made available by the Consolidated Appropriations Act, 2022, and the Consolidated Appropriations Act, 2023. The opportunity described in this notice is made available under Assistance Listings Number 20.313 Railroad Research and Development.

DATES: Applications for funding under this solicitation are due no later than 5:00 p.m. ET July 3, 2023. Applications that are incomplete or received after 5:00 p.m. ET on June 16, 2023 will not be considered for funding. See section D of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *www.Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to *FRA-NOFO-Support@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding project- or program-related information in this notice, please contact Tarek Omar, Office of Research, Development, and Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–306, Washington, DC 20590; email: *tarek.omar@dot.gov;* phone: 202–493–6189. Grant application submission and processing questions should be addressed to *FRA-NOFO-Support@dot.gov.*

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA recommends that applicants read this notice in its entirety prior to preparing application materials. The definitions of key terms used throughout the NOFO are listed under the Program Description in section A(2). There are several administrative prerequisites and specific eligibility requirements described herein that applicants must comply with to submit an application. Additionally, applicants should note that the required Program Narrative component of the application package may not exceed 40 pages in length.

Table of Contents

A. Program Description
B. Federal Award Information
C. Eligibility Information
D. Application and Submission Information
E. Application Review Information
F. Federal Award Administration Information
G. Federal Awarding Agency Contacts
H. Other Information

A. Program Description

1. Overview

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL). Public Law 117–58. The BIL authorized the Secretary of Transportation to fund a rail research and development center of excellence (CoE) to advance research and development that improves the safety, efficiency, and reliability of passenger and freight rail transportation. 49 U.S.C. 20108. The Secretary is authorized to fund the cost of establishing and maintaining the CoE and related research activities. Only one CoE may be established, but that CoE may reside at one institution or be a consortium of member institutions.

The CoE would provide funding to entities that meet the criteria in 49 U.S.C. 20108(j)(2) for research activities that would include basic and applied research, evaluation, education, workforce development, and training efforts related to safety, project delivery, efficiency, reliability, resiliency, and sustainability of urban commuter, intercity high-speed and freight rail transportation, to include advances in rolling stock, advanced Positive Train Control, human factors, rail infrastructure, shared corridors, grade crossing safety, inspection technology, remote sensing, rail systems maintenance, network resiliency, operational reliability, energy efficiency, and other advanced technologies. 49 U.S.C. 20108(j)(4). The purpose of this notice is to solicit applications to establish and maintain a CoE for the purpose of pursuing such eligible rail research and development activities. In this NOFO, ''CoE Program'' refers to the

activities to maintain and establish the CoE, and ''Project'' refers to the research activities conducted by the CoE or its subrecipients.

FRA is committed to advancing safe, efficient transportation, including through the research developed by the CoE Program.

In addition, FRA seeks to fund projects under the CoE Program that reduce greenhouse gas emissions in the transportation sector, incorporate evidence-based climate resilience measures and features, reduce the lifecycle greenhouse gas emissions from the project materials, and avoid adverse environmental impacts to air or water quality, wetlands, and endangered species, and address the disproportionate negative environmental impacts of transportation on disadvantaged communities, consistent with Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619).

FRA also seeks to award projects under the CoE Program will create proportional beneficial impacts to all populations in a project area, remove transportation related disparities to all populations in a project area, and increase equitable access to project benefits, consistent with Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009).

Finally, FRA intends to use the projects resulting from the CoE Program to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships, in project planning stages, consistent with Executive Order 14025, Worker Organizing and Empowerment (86 FR 22829), and Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335). FRA also intends to use the CoE Program to support wealth creation, consistent with the Department's Equity Action Plan through the inclusion of local inclusive economic development and entrepreneurship such as the utilization of disadvantaged business enterprises, minority-owned businesses, women-owned businesses, or 8(a) firms.

Section E of this NOFO, which outlines the grant selection criteria, describes the process for selecting a CoE. Section F(3*)* describes progress and performance reporting requirements for the selected CoE Program, and as applicable, Projects.

2. Definitions of Key Terms

a. ''Consortium,'' for the purpose of this NOFO, means a meaningful arrangement with all members involved in planning and implementing the proposed activity or activities. A consortium is a long-term relationship between and among the members and will last for the full performance of the activity. In this NOFO, consortium refers to both the arrangement that may exist among members to establish the CoE or the arrangement between entities eligible to receive funding from the CoE.

b. ''Institution of higher education'' (''IHE'') is an educational institution in any State that (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of 20 U.S.C. 1091(d); (2) is legally authorized within such State to provide a program of education beyond secondary education; (3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary of Education; (4) is a public or other nonprofit institution; and (5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of pre-accreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. ''Institution of higher education'' also includes (1) any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of 20 U.S.C. 1001(a); and (2) a public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection 20 U.S.C. 1001(a)(1), admits as regular students individuals who (1) are beyond the age of compulsory school attendance in the State in which the institution is located; or (2) who will be dually or concurrently enrolled in the institution and a secondary school.

c. ''Minority-serving institution'' (MSI) means an IHE whose enrollment of a single minority or a combination of minorities exceeds 50 percent of the total enrollment, as defined in section 365 of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1067k). 20 U.S.C. 1067k defines the term ''minority'' to mean: ''American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.'' If the application includes any minority-serving institution(s) according to the definition in 20 U.S.C. 1067k, then for each such institution provide enrollment numbers, from the most recent semester/term where numbers are available, that show the institution meets the definition stated here.

d. Hispanic-serving institution (HSI) means an IHE that is (1) an eligible institution under 20 U.S.C.1101(a)(2); and (2) has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application.

e. Historically Black colleges and universities (HBCU) are institutions established prior to 1964 whose principal mission was, and is, the education of Black Americans, and must (1) satisfy section 322 of the HEA, as amended; (2) be legally authorized by the State in which it is located to be a junior or community college; or to provide an educational program for which it awards a bachelor's degree; and (3) be accredited or pre-accredited by a nationally recognized accrediting agency or association.

f. ''National Environmental Policy Act (NEPA)'' is a Federal law that requires Federal agencies to analyze and document the environmental impacts of a proposed action in consultation with appropriate Federal, State, and local authorities, and with the public. NEPA classes of action include the Environmental Impact Statement, Environmental Assessment, or Categorical Exclusion. The NEPA class of action depends on the nature of the proposed action, its complexity, and its potential impacts. For purposes of this NOFO, NEPA also includes all related Federal laws and regulations, including the Clean Air Act (42 U.S.C. 7401 *et seq.*), section 4(f) of the Department of Transportation Act, section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act. Additional information regarding FRA's

environmental processes and requirements are located on the FRA website.

g. ''Transformation'' means to design for the future, invest in purpose-driven research and innovation to meet the challenges of the present, and modernize a transportation system of the future that serves everyone today and in the decades to come.

B. Federal Award Information

1. Available Award Amount

The total funding available for an award under this NOFO is $ 2.5 million, annually, subject to the availability of funds. The combined funding amount available for fiscal years 2022 and 2023 under this NOFO is $5 million. Should additional CoE Program funds become available in fiscal year 2024 after the release of this NOFO, FRA may elect to award such additional funds to the CoE Program selected under this NOFO.

2. Award Size

Each year, for a total of three years, FRA anticipates providing $2.5 million to the CoE, subject to the availability of appropriations. The total amount available for the first two years of funding under this award is $5 million—$2.5 million for fiscal year 2022 and $2.5 million for fiscal year 2023. An additional $2.5 million will be made available in fiscal year 2024 subject to the availability of appropriations. The period of performance for the grant to establish and maintain the CoE will be 3 years, after which FRA will conduct a new competition, depending on funding availability. There are no predetermined maximum dollar thresholds for individual projects funded through the CoE. The CoE may fund multiple subawards with the available funding. (see section E, Application Review Information). The CoE Program and individual projects may require more funding than is available. FRA strongly encourages applicants to identify and include other State, local, public, or private funding or financing to support the CoE Program (and projects funded through the CoE, as applicable).

3. Award Type

FRA will make awards for the CoE Program selected under this notice through a cooperative agreement. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed-upon award, including technical assistance, review of interim work products, and increased program oversight. The term ''grant'' is used throughout this document and refers to funding awarded through a cooperative agreement. The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Grantees must be able to certify that expenditures are allowable, allocable, reasonable, and necessary to the approved activity before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage, as described in section C.2 of this NOFO, concurrent with Federal funds throughout the life of the CoE Program. See an example of standard terms and conditions for FRA grant awards on the FRA website. This template is subject to revision.

C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, Program eligibility and project eligibility. Applications that do not meet the requirements in this section will be ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in section D of this NOFO.

1. Eligible Applicants

Eligible applicants are those with strong past performance related to rail research, education, and workforce development activities; whose proposal would involve public and private sector passenger and freight railroad operators in establishing and maintaining the CoE; and would have regional and national impacts that align with DOT Strategic Goals.

Applications must identify an eligible applicant as the lead applicant. An application may identify entities that are not eligible applicants as project partners to the extent of such entities' proposed participation. If an application proposes multiple institutions to form the CoE together, the application must still identify a lead applicant. The lead applicant will serve as the primary point of contact for the application, and as the grantee of the CoE Program grant award; responsibilities for administering the CoE should be described in the CoE Description and Statement of Work in sect*ion D.*

2. Cost Sharing or Matching

The Federal share of total costs of establishing and maintaining the CoE and any related research activities funded under this notice will not exceed 50 percent. The estimated total cost to an applicant must be based on the best available information.

The minimum 50 percent non-Federal share may be comprised of public sector (*e.g.,* State or local) or private sector funding. FRA will not consider any Federal financial assistance, nor any non-Federal funds already expended (or otherwise encumbered) toward the matching requirement unless compliant with 2 CFR 200, including 2 CFR 200.458. In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost, in a uniform manner consistent with 2 CFR 200.306. Applicants must identify the source(s) of their matching and other leveraged funds, and must clearly and distinctly reflect these funds as part of the total Program cost in the application budget.

Funding under this NOFO may not be used for costs that are included in, or used to meet cost sharing or matching requirements of, any other federally financed award or program. If the applicant is seeking additional funding for a project that has already received Federal financial assistance, costs associated with the scope of work for the existing Federal award are not eligible for funding under this NOFO. Only new projects selected under this award are eligible for funding under this NOFO.

Before applying, applicants should carefully review the principles for cost sharing or matching in 2 CFR 200.306. See section D for required application information on non-Federal match and section E for further discussion of FRA's consideration of matching funds in the review and selection process. FRA will only approve pre-award costs consistent with 2 CFR 200.458, as applicable. See section D(6).

3. Other

a. Program Eligibility

The CoE Program must establish and maintain a center to advance research and development that improves the safety, efficiency, and reliability of passenger and freight rail transportation. The overarching goal of the Program and all projects receiving funding through the CoE should be transformation, which is one of the DOT Strategic Goals. The components of the CoE Program eligible for funding under this NOFO are establishing the CoE, maintaining the CoE, and providing funding for Projects consistent with the requirements in 49 U.S.C. 20108(j). To fund such Projects, the CoE will evaluate Project applications and provide funding to entities that meet the eligibility criteria in 49 U.S.C. 20108(j)(2) for Projects consistent with goals described in 49 U.S.C. 20108(j)(4).

Projects eligible for funding through the CoE and consistent with this NOFO

must be for basic and applied research, evaluation, education, workforce development, and training efforts related to safety, project delivery, efficiency, reliability, resiliency, and sustainability of urban commuter, intercity high-speed, and freight rail transportation—to include advances in rolling stock, advanced Positive Train Control, human factors, rail infrastructure, shared corridors, grade crossing safety, inspection technology, remote sensing, rail systems maintenance, network resiliency, operational reliability, energy efficiency, and other advanced technologies. The following entities are eligible applicants to receive a grant from the CoE, established pursuant to section A.1: An IHE (as defined in section 101 of HEA [20 U.S.C. 1001]) or a consortium of nonprofit IHEs. Members of the CoE may carry out certain Projects eligible under the Program.

A portion of the funds will be directed to activities consistent with 49 U.S.C. 20108(j)(1), and a portion of the funds will be directed to subrecipients for Projects consistent with section 20108(j)(4). Agreements with subrecipients must comply with the requirements in 2 CFR 200, including but not limited to 200.331, 200.332, and 200.333. FRA will review the recipient's process for selecting subrecipients or contractors to ensure compliance with Federal requirements.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See section D(2) for the application checklist. FRA welcomes the submission of other relevant supporting documentation that the applicant would like to submit.

1. Address To Request Application Package

Application materials may be accessed at *http://www.Grants.gov.* Applicants must submit all application materials in their entirety through *http://www.Grants.gov* no later than 5:00 p.m. ET on July 3, 2023. Applicants are strongly encouraged to apply early to ensure all materials are received before the application deadline, as it may take a number of weeks to establish a *Grants.gov* account. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at the FRA website. FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons with disabilities. If you require an alternative version of files provided, please contact Laura Mahoney, Office of the Chief Financial Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; email *laura.mahoney@dot.gov;* phone: 202–578–9337.

2. Content and Form of Application Submission

FRA urges applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Late applications or those missing required documentation will not be considered. Applicants may provide additional documents to support an application.

All application materials must be written in Times New Roman font, 12-point, with 8.5 x 11″ with 1″ margins; tables and figures may deviate from this standard. Do not rely on hyperlinks to external websites that provide supplemental content to the information contained in the proposal, as reviewers will be instructed not to view them.

Required documents for an application package are outlined in the checklist below.

a. Program Narrative

(1) Program Narrative Elements

This section describes the minimum content required in the Program Narrative component of the application. The Program Narrative must follow the basic outline below to address the Program requirements and assist evaluators in locating relevant information.

I. Cover Page	See D.2.a.(1)(a).
II. Program Summary	See D.2.a.(1)(b).
III. Program Funding Summary	See D.2.a.(1)(c).
IV. Applicant Eligibility	See D.2.a.(1)(d).
V. Program Eligibility	See D.2.a.(1)(e).
VI. Location	See D.2.a.(1)(f).
VII. Detailed CoE Description and Research Plan	See D.2.a.(1)(g).
VIII. Meeting the Evaluation and Selection Criteria	See D.2.a.(1)(h).
IX. Program Implementation and Management	See D.2.a.(1)(i).
X. DOT Strategic Goals	See D.2.a.(1)(j).

The above content must be provided in a narrative statement submitted by the applicant. The Program Narrative may not exceed 40 pages in length (excluding cover page, table of contents, and supporting documentation). If supporting documents are submitted, applicants must clearly identify the page number(s) in the Program Narrative that the documentation supports. The Program Narrative must adhere to the following outline:

(a) *Cover Page:* Include a cover page that lists the following elements in either a table or formatted list: title; location (*i.e.,* city, State, congressional district); applicant organization name; name of any other institutions the applicant proposed to be members of the CoE; any participating MSIs and/or HBCUs; Federal funding requested under this NOFO; and proposed non-Federal match; other sources of Federal funding, if applicable; and total CoE Program cost.

(b) *Program Summary:* Provide a brief, 4–6-sentence summary of the proposed CoE Program and what the CoE Program will entail, including the types of Projects the applicant intends to conduct or cause to be conducted. Include challenges the proposed CoE Program aims to address, and summarize the intended outcomes and anticipated benefits that will result.

(c) *Program Funding Summary:* Indicate, in table format, the amount of Federal funding requested, the proposed non-Federal match, identifying contributions from the private sector if applicable, and total CoE Program cost. Identify the source(s) of matching and other funds, and clearly and distinctly reflect these funds as part of the total CoE Program cost in the application budget. If applicable, provide the type and estimated value of any proposed in-kind contributions, as well as substantiate how the contributions meet the requirements in 2 CFR 200.306.

Additionally, describe the proposed approach to allocating funds for establishing the COE, maintaining the

CoE and for conducting research Projects, including how funds will be allocated for research conducted by other eligible entities. Include, as attachments or in an appendix, funding commitment letters outlining funding agreements. If Federal funding is proposed as a match, demonstrate the applicant's determination of eligibility for such use, and the legal basis for that determination. Also, note if the requested Federal funding under this NOFO or other programs must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. Finally, specify whether Federal funding for the CoE Program has previously been sought, and identify the Federal program and fiscal year of the funding request(s), as well as highlight new or revised information in this CoE Program application that differs from the application(s) to other financial assistance programs.

Example Program Funding Table:

Task #	Task name/project component	Cost	Percentage of total cost
1			
2			
Total Program Cost			
Federal Funds Received from Previous Grant (if any)			
Federal Funding Request			
Non-Federal Funding/Match		Cash: In-Kind:	
Portion of Non-Federal Funding from Private Sector			
Pending Federal Funding Requests			

(d) *Applicant Eligibility:* Explain how the applicant meets the applicant eligibility criteria outlined in section C of this notice. If the application is proposing a CoE with multiple members (*i.e.,* a consortium), the application must be signed by an authorized representative of each member and must include a description of the roles and responsibilities of each member, including budget and subrecipient information showing how the members will share CoE Program costs and how research activities will be conducted.

(e) *Program Eligibility:* Identify how the program that the applicant intends to pursue meets the criteria identified in section C(3) of this notice. Include challenges the proposed program aims to address, and summarize the intended outcomes and anticipated benefits that will result.

(f) *Location:* Include the address of the lead applicant and all other members in the consortium, if applicable, as well as the location of potential research activities, if known.

(g) *Detailed CoE Description and Research Plan:* Include a detailed CoE Program description that expands upon the brief program summary. This detailed description should provide, at a minimum, background on the challenges the CoE Program aims to address; the expected users and beneficiaries of the CoE Program, including all railroad operators, if applicable; the specific components and elements of the CoE Program; the suggested basic and applied research and its potential impacts; how the applicant would conduct any research in-house as well as in collaboration with consortium members (if applicable); how the applicant would announce, evaluate for selection, and fund research projects conforming to the research areas identified in section C(3) and any other information the applicant deems necessary to justify the proposed CoE Program. The applicant must delineate and describe the cost to establish the CoE, maintain the CoE, and costs to be used for research projects. The applicant must also include how it plans to administer CoE research funds through subawards, including a plan for providing the following information to FRA: identifying the subrecipient (particularly if the applicant has information on specific potential subrecipients); the role of the subrecipient; and how the applicant plans to monitor the subrecipient. Include a description of how the applicant intends to ensure Projects funded through the CoE meet the eligibility criteria in section C(3). The applicant should address how the proposed CoE Program will meet the Transformation goal to design for the future and invest in purpose-driven research and innovation to meet the challenges of the present and modernize a transportation system of the future that serves everyone today and in the decades to come.[1] The applicant should identify how the proposed Program will match research and policy to advance breakthroughs; foster experimentation to identify new ideas; involve collaboration to accelerate the adoption of innovations and technologies; and provide flexibility and adaptability for transportation system investments to accommodate and respond to changing needs and capabilities to provide long-term benefits. To that end, the Program description should address how it will evaluate and select projects for subawards pursuant to 49 U.S.C. 20108(j)(4). Applicants must provide information about proposed performance measures, as described in section F(3) and required in 2 CFR 200.301. Further, applicants must provide plans for taking affirmative steps to employ small businesses, consistent with 2 CFR 200.321.

(h) *Meeting the Evaluation and Selection Criteria:* Include a thorough discussion of how the proposed Program meets all the evaluation criteria and selection criteria, as outlined in section E of this notice. If an application does not sufficiently address how the proposal meets the evaluation and selection criteria, it is unlikely to be a competitive application.

(i) *Program Implementation and Management:* Describe proposed Program implementation and project management arrangements. Include descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting. Describe past experience in managing and overseeing similar projects. Additionally, CoE grantees must conduct technology transfer to make research results available to potential users in a form that can be implemented, utilized, commercialized, or otherwise applied. Describe the technology transfer activities that the applicant will undertake to ensure the successful transfer of information and technology to those who can use it, especially current transportation

[1] U.S. Department of Transportation, Strategic Plan FY 2022–2026.

practitioners. Provide examples of prior experience in outreach, dissemination, and technology transfer activities related to transportation research and education.

(j) *DOT Strategic Goals:* Applicants are encouraged to describe efforts to consider safety, climate change and sustainability impacts, efforts to improve equity and reduce barriers to opportunity in project planning, as well as how the project will transform the nation's transportation infrastructure within the project area or wider rail network to improve operations, increase capacity, and maintain existing assets. In addition, applicants should describe how planning activities and Program delivery actions advance good-paying, quality jobs and workforce programs and hiring policies that promote workforce inclusion. Additional information about strong labor standards that grant award recipients will be expected to meet are described below in Administrative and National Policy Requirements (section F(2)).

(2) Additional Application Elements

Applicants must submit the following documents and forms. Note, the Standard OMB Forms needed for the electronic application process are at *www.Grants.gov.*

(a) A Statement of Work (SOW) addressing the objective, scope, schedule, budget, and performance measures for the proposed Program if the applicant were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed as well as the eligibility of the work under this NOFO, and can monitor progress toward completing tasks and deliverables during a prospective grant's period of performance. The SOW should also describe how funds will be budgeted across consortium members (if applicable). Applicants may use FRA's standard SOW, schedule, budget, and performance measures templates to guide their submissions. The four templates are labeled Example General Grants—Attachments 2–5 and are located on the FRA website. When preparing the budget, the total cost of a project must be based on the best available information as indicated in cited references.

(b) Curriculum vitae for key personnel, limited to two pages per individual.

(c) Environmental compliance. After selection, FRA will work with the grantee(s) to ensure compliance with NEPA, section 106 of the National Historic Preservation Act of 1966, as amended, and other applicable environmental laws.

(d) SF 424—Application for Federal Assistance.

(e) SF 424A—Budget Information for Non-Construction or SF 424C—Budget Information for Construction.

(f) SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction.

(g) FRA F 30—Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements, and Lobbying, located at: *https://railroads.dot.gov/elibrary/fra-f-30-certifications-regarding-debarment-suspension-and-other-responsibility-matters*.

(h) FRA F 251—Applicant Financial Capability Questionnaire.

(i) SF LLL—Disclosure of Lobbying Activities.

3. Unique Entity Identifier (UEI), System for Award Management (SAM), and Submission Instructions

To apply for funding through *Grants.gov*, applicants must be properly registered in SAM before submitting an application, provide a valid unique entity identifier in its application, and continue to maintain an active SAM registration as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov.* Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable UEI and SAM requirements. (Note that if a UEI number must be obtained or renewed, this may take a significant amount of time to complete.) If an applicant has not fully complied with these requirements by the time the Federal awarding agency is ready to make an award, the agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. Late applications that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov*, applicants must:

a. Register with the SAM at *www.SAM.gov*.

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov*. The SAM database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award. Information about SAM registration procedures is available at *www.sam.gov.*

b. Obtain a Unique Entity Identifier

On April 4, 2022, the Federal Government discontinued using DUNS numbers. The DUNS number was replaced by a new, non-proprietary identifier that is provided by the System for Award Management (*SAM.gov*). This new identifier is called the UEI, or the Entity ID. To find or request a Unique Entity Identifier, please visit *www.sam.gov.*

c. Create a *Grants.gov* Username and Password

Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Applicants must use the organization's UEI number to complete this step. Additional information about the registration process is available at: *https://www.grants.gov/web/grants/applicants/organization-registration.html.*

d. Acquire Authorization for Your AOR From the E-Business Point of Contact (E-Biz POC)

The applicant organization's E-Biz POC must respond to the registration email from *Grants.gov* and log in at *www.Grants.gov* to authorize the applicant as the AOR. Please note there

can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in This NOFO

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html*

4. Submission Dates and Times

Applicants must submit complete applications to *www.Grants.gov* no later than 5:00 p.m. ET, July 3, 2023. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine the timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. To apply for funding under this announcement, all applicants are expected to be registered as an organization with *Grants.gov*. Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline. To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) failure to complete the *Grants.gov* registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Executive Order 12372 requires applicants from State and local units of government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the State. Applicants must contact their State SPOC to determine if the program has been selected for State review.

6. Funding Restrictions

Consistent with 2 CFR 200.458, FRA, as applicable, will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for the efficient and timely performance of the scope of work. Under 2 CFR 200.458, grantees must seek written approval from the administering agency for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without written approval may not be eligible for reimbursement or included as a grantee's matching contribution.

7. Other Submission Requirements

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

For any supporting application materials that an applicant cannot submit via *Grants.gov*, such as oversized engineering drawings, an applicant may submit an original and two (2) copies to Tarek Omar, Federal Railroad Administration, Room W38–306 1200 New Jersey Avenue SE, Washington, DC 20590, or a copy via email: *FRA-NOFO-Support@dot.gov.* However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, explaining to FRA how to access files on a referenced website may also be sufficient.

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx, and .ppt when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

E. Application Review Information

1. Criteria

a. Eligibility and Completeness Review

FRA will first screen each application for applicant and Program eligibility (eligibility requirements are outlined in section C of this notice), completeness (application documentation and submission requirements are outlined in section D of this notice), and the 50 percent minimum match in determining whether the application is eligible. Any application FRA finds ineligible during this screen will not be advanced to evaluation.

b. Evaluation Criteria

FRA will evaluate all eligible and complete applications using the evaluation criteria outlined in this section to determine program benefits and technical merit.

(1) Program Benefits

FRA will evaluate the anticipated benefits of the proposed Program detailed in the Program Narrative, budget and CoE description. Considerations include:

(a) The applicant's demonstrated leadership capacity to address rail transportation problems and advance rail transportation expertise and technology. This should include:

(i) Examples of applicant's high standing within the national arena of rail transportation research as evidenced by activities such as publications, committee work, participation in professional transportation organizations and conferences (*e.g.,* presentations, steering committees, session chairs, etc.), awards, and other indicators of leadership excellence.

(ii) The extent to which the CoE Program will have regional and national impacts and examples of the applicant's experience in contributing to the solution of local, regional, and/or national rail transportation problems.

(iii) Demonstrated leadership in the development and delivery of programs. This includes innovative rail transportation education, workforce development, technology transfer, and research activities.

(b) The extent to which the applicant will involve public and private sector passenger and freight railroad operators and the composition of any existing or planned stakeholder engagement and/or other entity, expected to provide technical input as research is being conducted.

(c) The degree to which the applicant's proposed activities are multimodal and multidisciplinary in scope, and how such an emphasis improves or expands the quality of the research.

(d) The extent of the applicant's background in education and workforce development efforts. How the applicant's management of the CoE and proposed projects will result in the development of a transportation workforce that is prepared to design, deploy, operate, and maintain the complex transportation systems of the future. How the applicant's engagement

in this Program will be leveraged to support education and workforce development activities.

(e) Evidence of a commitment to working with underrepresented/underserved communities. This commitment can be demonstrated if the applicant is an MSI or HBCU; if applicant is partnering with an MSI or HBCU; and/or if the applicant has a demonstrated association with other stakeholder group or groups representing or serving underrepresented/underserved communities. Each applicant that is not a MSI or a HBCU is encouraged to partner with an MSI or HBCU, or other organization representing underserved/underrepresented communities and submit a joint application. This is in keeping with several Executive Orders. Executive Order 13985 (January 20, 2021) states in section 6 that ''The Federal Government should, consistent with applicable law, allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities.'' Executive Order 14041 (September 3, 2021), in section 2(b)(D), promotes ''strengthening the capacity of HBCUs to participate in Federal programs, access Federal resources, including grants and procurement opportunities, and partner with Federal agencies.'' And Executive Order 14045 (September 13, 2021) established a Presidential Advisory Commission to investigate and suggest to the President ''ways to strengthen the capacity of institutions, such as [Hispanic-serving institutions] (HSIs), to equitably serve Hispanic and Latino students and increase the participation of Hispanic and Latino students, Hispanic-serving school districts, and the Hispanic community in the programs of the Department [of Education] and other agencies.''

(f) The extent to which a proposal incorporates Executive Order 14008 (January 27, 2021) in its research plans. Executive Order on Tackling the Climate Crisis at Home and Abroad demands a government-wide approach to the crisis, ''to build a modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050.''

(g) The extent to which the application demonstrates the applicant's ability and preparation to support meaningful research soon after the grant is awarded.

(2) Technical Merit

The evaluation of Technical Merit will include an assessment of:

(a) The applicant's existing expertise and ability to evaluate, support, and, as applicable, conduct any proposed research activities, including:

(i) Examples of significant impacts of related past rail research, including a description of products or patents, or a change in practice, or instances of informing policy decisions.

(ii) Examples of research included in peer-reviewed journals, publications, and conferences that exemplifies an applicant's experience in the topical subject matter and/or with the research methods, data sources, stakeholders, etc., relevant to the chosen topic.

(iii) Qualifications of faculty and staff expected to be involved in the applicant's proposed activities.

(b) The research resources and existing programs already available to evaluate, conduct, and oversee any proposed research activities, including those at consortium universities including, if relevant to the transportation research:

(i) Dedicated laboratory space

(ii) Specialized computer or other technical equipment

(iii) IHE support personnel with particular knowledge of transportation research needs

(c) Demonstrated experience and approach to successfully selecting, managing and overseeing subawards and contracts consistent with 2 CFR part 200, and plans for evaluating Project proposals for subawards including whether such plans include assessment for technical merit, alignment with research objectives and the DOT Strategic Goal of *Transformation.* This will include an assessment of the applicant's experience and proposed approach to informing FRA about its work including subreipient identity, applicant's role, and magnitude of funds transferred.

(d) The performance metrics (at least two) that the applicant proposes to assess its performance and subrecipient performance in meeting research project and CoE goals; and how the applicant will obtain and maintain the information included in those metrics.

(e) Applicant's management approach and procedures, and how it will implement planning activities and produce results in an effective, timely, and cost-efficient manner, including:

(i) Plans for overall management and oversight of fiscal and technical activities, including methods for budgeting funds across all consortium members, ensuring cost efficiency, and a demonstration of the ability to implement the grant in a cost-efficient and timely manner.

(ii) The extent to which the applicant has demonstrated commitment to, and implementation of, peer review and other research best practices in the selection and management of projects that meet the eligibility criteria described in 49 U.S.C. 20108*(j)(4)* and section C(3).

(iii) If submitting a joint application, details on how tasks and oversight responsibilities will be distributed.

c. Selection Criteria

(1) Selection Preference: In addition to the eligibility and completeness review and the evaluation criteria outlined in this subsection, FRA will apply selection preferences for:

(a) The extent to which an applicant demonstrates strong past performance in rail research, education, and workforce development. This includes such examples as developing transformative research, incorporating climate and clean energy priorities in research, a demonstrated ability to achieve workforce development goals, MSI/HBCU participation, a commitment to underrepresented/underserved communities and economic equity, and the involvement of public and private sector passenger and freight railroads.

(b) The extent to which an application proposes a non-Federal share of total project costs greater than 50 percent.

(2) Strategic Goals: FRA will also consider the extent to which the Program addresses the following additional DOT Strategic Goals:

(a) *Safety.* FRA will assess the Program's ability to foster a safe transportation system for the movement of goods and people, consistent with the Department's Strategic Goal to reduce transportation-related fatalities and serious injuries across the transportation system. Such considerations will include, but are not limited to, the extent to which the Program will improve safety at highway-rail grade crossings, reduce rail-related trespassing, upgrade infrastructure to achieve a higher level of safety.

(b) *Economic Strength and Global Competitiveness.* Infrastructure Investment and Job Creation. In support of Executive Order 14025, Worker Organizing and Empowerment (86 FR 22829), and Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335), FRA will assess the Program's ability to contribute to economic progress stemming from infrastructure investment and associated job creation in the industry. Such considerations

will include, but are not limited to, the extent to which the CoE will support the development of a transportation workforce that is prepared to plan, design, deploy, operate, and maintain the complex transportation systems of the future. As part of these efforts, applications must demonstrate a Center's commitment to broadening participation and attracting new entrants to the transportation field in order to enhance diversity and inclusion. Diversity is considered to be the inclusion of the many communities, identitiesm races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities, and any other attributes identified as needing to be addressed.

(c) *Equity.* In support of Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009) and Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619), FRA will assess the Program's ability to address equity and barriers to opportunity, to the extent possible within the program and consistent with law. Such considerations will include, but are not limited to, the applicant's plan for using small businesses to complete projects, the extent to which the program improves or expands transportation options for underserved communities, mitigates the safety risks and detrimental quality of life effects that rail lines can have on communities, especially those that might have been historically disconnected due to railroad infrastructure, and expands workforce development and career pathway opportunities to foster a more diverse rail industry. This will also include community engagement efforts already taken or planned, the extent to which engagement efforts are designed to reach impacted communities, whether engagement is accessible for persons with disabilities or limited English-proficient persons within the impacted communities, and how community feedback is considered in decision-making.

(d) *Climate and Sustainability.* In support of Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, FRA will assess the Program's ability to reduce the harmful effects of climate change and anticipate necessary improvements to prepare for extreme weather events. Such considerations will include, but are not limited to, the extent to which the Program supports reductions in emissions, promotes energy efficiency, increases resiliency, and recycles or redevelops existing infrastructure.

(e) *Transformation.* FRA will assess the Program's ability to design for the future and invest in purpose-driven research and innovation to meet the challenges of the present and modernize a transportation system of the future that serves everyone today and in the decades to come. FRA will also assess the extent to which a proposal could be defined as ''transformative,'' in a DOT context. Examples of the DOT Transformation strategies from the FY 2022–26 DOT Strategic Plan include:

(i) University partnerships that bring new science into practice.

(ii) Exploratory research and experimentation, translating developments from other fields into transportation.

(iii) Bringing new voices into the research conversation.

(iv) Conducting research to understand the needs and implications of emerging transportation technologies such as automation and unmanned aerial systems, transportation system use and operations, and infrastructure design.

2. Review and Selection Process

FRA will conduct a four-part application review process:

a. Screen applications for completeness, eligibility, and the minimum match.

b. Apply evaluation criteria to remaining applications (completed by a technical evaluation panel).

c. Apply selection criteria and recommend the selected applicant for the FRA Administrator's review, which includes senior leadership from the Office of the Secretary and FRA; and

d. Select recommended award for the Secretary's or his designee's review and approval (completed by the FRA Administrator).

3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold of $250,000 (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

F. Federal Award Administration Information

1. Federal Award Notice

FRA will announce applications selected for funding in a press release and on the FRA website after the application review period. This announcement is FRA's notification to successful and unsuccessful applicants alike. FRA will contact applicants with successful applications after the announcement with information and instructions about the award process. This notification is not an authorization to begin proposed Project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grantee and FRA, including an approved scope, schedule, and budget, before obligating the grant. See an example of standard terms and conditions for FRA grant awards at *https://railroads.dot.gov/elibrary/notice-grant-award-example* . This template is subject to revision.

2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, grantees must comply with all applicable requirements of Federal law, including, without limitation: the Constitution of the United States; the relevant authorization and appropriations; the conditions of performance, nondiscrimination requirements and other assurances made applicable to the award of funds; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget (OMB). In complying with these requirements, grantees, in particular, must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If FRA determines a grantee has failed to comply with applicable Federal

requirements, FRA may terminate the award of funds and disallow previously incurred costs, requiring the grantee to reimburse any expended award funds. See an example of standard terms and conditions for FRA grant awards at *https://railroads.dot.gov/elibrary/award-administration-and-grant-conditions.* This template is subject to revision.

Examples of administrative and national policy requirements include: 2 CFR 200; procurement standards at 2 CFR 200 subpart D—Procurement Standards; 2 CFR 200.317 and 2 CFR 200.401; compliance with Federal civil rights laws and regulations; disadvantaged business enterprises requirements; debarment and suspension requirements; drug-free workplace requirements; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements; NEPA; environmental justice requirements; and 2 CFR 200.315, governing rights to intangible property. Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR 200 and 2 CFR 1201.

Domestic Preference Requirements

As expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475), the executive branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Assistance under this NOFO is subject to the requirements in the Buy American Act (41 U.S.C. 8301–8305) and Build America, Buy America Act, Public Law 117–58, sections 70901–52. In addition, as expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. FRA expects all applicants to comply with that requirement without needing a waiver.

Civil Rights and Title VI

As a condition of a grant award, grantees should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR 21), the Americans with Disabilities Act of 1990 (ADA), and section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. DOT's and the applicable Operating Administrations' Office of Civil Rights may work with awarded grantees to ensure full compliance with Federal civil rights requirements.

Critical Infrastructure Security and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for Federal funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with Presidential Policy Directive 21—Critical Infrastructure Security and Resilience and the National Security Presidential Improving Cybersecurity for Critical Infrastructure Control Systems

3. Reporting and Evaluation

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring, and close-out requirements. Reports may be submitted electronically.

The applicant must comply with all relevant requirements of 2 CFR 200. Pursuant to 2 CFR 170.210, non-Federal entities applying under this NOFO must have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. See an example of standard terms and conditions for FRA grant awards at the FRA website.

As a condition of grant award, grantees may be required to participate in an evaluation undertaken by DOT or another agency or partner. The evaluation may take different forms such as an implementation assessment across grantees, an impact and/or outcomes analysis of all or selected sites within or across grantees, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation and/or use information available through other reporting. As a part of the evaluation, as a condition of award, grantees must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

c. Performance and Program Evaluation

As a condition of grant award grantees may be required to participate in an evaluation undertaken by DOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grantees, an impact and/or outcomes analysis of all or selected sites within or across grantees, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grantees must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

Recipients and sub-recipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure the effectiveness of their projects and strategies. Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115–435 (2019) urges Federal awarding agencies and Federal

assistance recipients and sub-recipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency'' (codified at 5 U.S.C. 311). For grantees, evaluation expenses are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such expenses may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation (2 CFR 200).

For grantees receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation (2 CFR 200).

d. Performance Reporting

Each applicant selected for funding must collect information and report on the Program's and each subaward's performance using measures mutually agreed-upon by FRA and the grantee to assess progress in achieving strategic goals and objectives. The applicable measure(s) will depend upon the type of Project(s) funded through the CoE.

G. Federal Awarding Agency Contacts

For further information regarding this notice, please contact the FRA NOFO Support program staff via email at *FRA-NOFO-Support@dot.gov.* If additional assistance is needed, contact Tarek Omar, Office of Research, Development, and Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–306, Washington, DC 20590; email: *tarek.omar@dot.gov;* phone: 202–493–6189.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be personal identifiable information (PII) or a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains PII or Confidential Business Information (CBI)''; (2) mark each affected page PII and/or ''CBI''; and (3) highlight or otherwise denote the PII or CBI portions.

The DOT regulations implementing the Freedom of Information Act (FOIA) are found at 49 CFR 7 Subpart C—Availability of Reasonably Described Records under the Freedom of Information Act and sets forth rules for FRA to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of application and proposals submitted by successful applicants may be released in response to FOIA requests.

The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–09240 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2023–03; Accident Mitigation and Train Length

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of safety advisory.

SUMMARY: Freight train length has increased in recent years, and while research is ongoing related to operational aspects of long trains, including brake system performance, it is known that the in-train forces longer trains experience are generally stronger and more complex than those in shorter train consists. FRA is issuing this Safety Advisory to ensure railroads and railroad employees are aware of the potential complexities associated with operating longer trains and to ensure they take appropriate measures to address those complexities to ensure the safe operation of such trains. Among other things, this Safety Advisory recommends that railroads review their operating rules and existing locomotive engineer certification programs to address operational complexities of train length, take appropriate action to prevent the loss of communications between end-of-train devices, and mitigate the impacts of long trains on blocked crossings.

FOR FURTHER INFORMATION CONTACT: Christian Holt, Staff Director, Operating Practices Division, Office of Railroad Safety, FRA, 1200 New Jersey Ave. SE, Washington, DC 20590, telephone (202) 366–0978.

Disclaimer: This Safety Advisory is considered guidance pursuant to DOT Order 2100.6A (June 7, 2021). Except when referencing laws, regulations, policies, or orders, the information in this Safety Advisory does not have the force and effect of law and is not binding in any way. This document does not review or replace any previously issued guidance.

SUPPLEMENTARY INFORMATION:

I. Background

Freight-train length, particularly for Class I railroads, has increased in recent years.[1] The operation of longer trains presents different, more complex, operational challenges, which can be exacerbated by the weight and makeup of the trains.[2] Accordingly, FRA's Office of Research, Development, and Technology is currently studying the air brake system performance and resulting train dynamics of trains comprised of up to 200 cars.[3] Additionally, in response to the mandate of Section 22422 of the Infrastructure Investment and Jobs Act,[4] the National Academies of Sciences, Engineering and Medicine (NAS) is conducting a study of the impacts of trains longer than 7,500 feet.[5] The estimate to complete both FRA and NAS's studies is 2024.

While this research is ongoing, FRA is issuing this Safety Advisory to ensure railroads and railroad employees are aware of the potential complexities involved in the operation of longer trains, and appropriate actions are taken to address these complexities. This Safety Advisory also makes clear that train length is a critical factor to consider when building any train, just as consideration of a consist's

---

[1] *See* GAO's May 2019 report titled RAIL SAFETY: Freight Trains Are Getting Longer, and Additional Information is Needed to Assess Their Impact, GAO–19–443 (available at *https://www.gao.gov/assets/gao-19-443.pdf*).

[2] *See* FRA Safety Advisory 2023–02, *Train Makeup and Operational Safety Concerns,* for a discussion of how train makeup affects safety. FRA Safety Advisory 2023–02 is available at: *https://www.federalregister.gov/documents/2023/04/11/2023-07579/safety-advisory-2023-02-train-makeup-and-operational-safety-concerns.*

[3] *See https://railroads.dot.gov/sites/fra.dot.gov/files/2022-12/2023_RDT_CurrentProjects_complete_FINAL.pdf.*

[4] Public Law 117–58 (Nov. 15, 2021).

[5] *See* NAS *https://www.nationalacademies.org/our-work/impacts-of-trains-longer-than-7500-feet.*

configuration is critical, as outlined in FRA Safety Advisory 2023–02.[6]

FRA has identified three significant incidents (discussed below) that have occurred since 2022 involving trains with more than 200 cars, where train handling and train makeup is believed to have caused, or contributed to, the incidents. These incidents (which occurred in Springfield, Ohio; Ravenna, Ohio; and Rockwell, Iowa) involved trains that were 12,250 feet or longer and weighed over 17,000 trailing tons. FRA believes these incidents demonstrate the need for railroads and railroad employees to be particularly mindful of the complexities of operating longer trains, which include, but are not limited to: (1) train makeup and handling; (2) railroad braking and train handling rules, policies, and procedures; (3) protecting against the loss of end-of-train (EOT) device communications; and (4) where applicable, protecting against the loss of radio communications among crew members. These technical complexities make it critical that employees assigned to operate longer trains are adequately trained and qualified for the most demanding service for which they can be called. Additionally, these technical complexities make it necessary to ensure that a railroad's operational testing program adequately assesses and evaluates whether employees are appropriately equipped and demonstrate the capability to fully address those complexities in real world operating scenarios.

Springfield, Ohio—March 4, 2023

On March 4, 2023, at approximately 4:54 p.m. a Norfolk Southern Railway (NS) 210-car, mixed-freight train totaling 13,470 feet and 17,966 trailing tons with distributed power units (DPUs) experienced a derailment involving 28 cars, including 21 empty and 7 loaded cars in Springfield, Ohio. The train had 82 cars equipped with end-of-car cushioning devices, and 18 of those derailed. The train consisted of three head-end locomotives and two mid-train DPUs, with one head-end locomotive offline. The train was traveling on an ascending 0.6% grade with the heavier part of the consist (the back end) on a 0.7% downhill grade. The weight was mostly concentrated at the head and rear ends of the train. During the incident, dynamic braking was applied only to the head-end locomotive consist, while the DPUs were idle, making the train function like a conventional train. The derailment happened at the sag between ascending and descending grades, with short, empty rail cars designed to ship coiled steel being the first to derail. Buff forces peaked as the downhill portion of the train ran-in, causing the derailment of cars 70 through 72 (the short coil cars) and the subsequent pile-up. The train was classified as a key train,[7] with 28 loaded hazardous materials (hazmat) cars distributed throughout. No hazmat cars derailed. FRA's investigation into this incident is currently ongoing, but preliminary indications show excessive buff force due to train makeup and train handling are the primary causes of the incident.

Ravenna, Ohio—November 1, 2022

On November 1, 2022, at approximately 7:04 p.m., a NS 238-car, mixed-freight train totaling 15,657 feet and 24,538 trailing tons with DPUs experienced a derailment involving 22 cars, in Ravenna, Ohio. The train included 188 loads and 50 empties, and was powered by two head-end locomotives and two mid-train DPUs. The incident occurred on the NS Keystone Subdivision main track. The derailment happened during an undesired emergency air brake application, the cause of which is still under investigation. The train was designated as a key train, and 2 of the 63 hazmat cars derailed, in addition to 20 other cars. In the consist, 56 cars were equipped with end-of-car cushioning devices. The train was initially operating with the energy management system engaged, but reverted to manual operation prior to the derailment. The railroad reported the cause of the incident as buffing or excessive slack action due to train makeup, but FRA's investigation is ongoing.

Rockwell, Iowa—March 24, 2022

On March 24, 2022, at approximately 1:59 a.m., a southbound Union Pacific Railroad (UP) train totaling 12,250 feet long and 23,315 trailing tons experienced a derailment of 37 cars in Rockwell, Iowa. The train was traveling at a speed of 46 miles per hour at the time of the incident. The train consisted of two head-end locomotives, one mid-train DPU, one rear DPU, and a total of 204 cars consisting of 169 loads and 35 empties. At the time of the incident, the energy management system was engaged, the train's head-end was ascending with the rear portion descending, causing the slack to run in, leading to compression at the middle of the train. This incident is still under investigation and the analysis of in-train forces is ongoing, but preliminary indications are that the primary cause of the incident was buffing or excessive slack action due to train makeup.

II. The Complexities of Operating Longer Trains

As noted above, the operation of longer trains involves technical challenges pertaining to (1) train makeup and handling; (2) railroad braking and train handling rules, policies, and procedures; (3) protecting against the loss of EOT device communications; and (4) where applicable, protecting against the loss of radio communication among crew members.

Train Makeup and Handling

FRA notes that recently issued Safety Advisory 2023–02 addresses train makeup and accompanying operational safety concerns. FRA reiterates the recommendations in that Safety Advisory as applied to longer trains.

Railroad Braking and Train Handling Rules, Policies, and Procedures

Air brake and train handling (ABTH) rules are the basis for the safe operation of any train, but as noted above, longer trains may pose unique challenges that must be comprehensively addressed in railroads' ABTH rules. ABTH rules are developed from experience and are based on factors such as the designs and types of rolling equipment in a consist, whether the equipment is loaded or empty, and the placement of that equipment in a train's consist. FRA recognizes that railroads regularly update their ABTH rules, but FRA is concerned that some railroads' ABTH rules do not sufficiently address issues related to train length such as, but not limited to:

- The maximum number of powered axles in stretch (powered) and dynamic braking;
- Train consist comprised of long-short car combinations;
- The placement of loaded and empty cars within a train consist;
- End-of-car cushioning devices;
- Air brakes;
- The use of distributed power, if equipped;

[6] *https://www.federalregister.gov/documents/2023/04/11/2023-07579/safety-advisory-2023-02-train-makeup-and-operational-safety-concerns.*

[7] As defined by Association of American Railroads (AAR) Circular OT–55, available at *https://public.railinc.com/sites/default/files/documents/OT-55.pdf*, a ''Key Train'' is any train with: (1) One tank car load of Poison or Toxic Inhalation Hazard (PIH or TIH) (Hazard Zone A, B, C, or D), anhydrous ammonia (UN1005), or ammonia solutions (UN3318); (2) 20 car loads or intermodal portable tank loads of any combination of hazardous material; or (3) One or more car loads of Spent Nuclear Fuel (SNF), High Level Radioactive Waste (HLRW).

- Operating over grades and through curves;
- Cold weather operations; and
- Train automatic operation (energy management systems), including transfer from automatic to manual operating scenarios.

Accordingly, this Safety Advisory recommends that railroads review their existing ABTH rules and update those rules as necessary to ensure they comprehensively address the complexities associated with train length in the railroad's operations.

Protecting Against the Loss of EOT Device Communications

Railroads have used EOT devices for years to monitor brake pipe pressure at the rear of the train. More recently, the functionality of these devices has expanded to assist in emergency braking. Two-way EOT device systems are comprised of a rear-of-train unit (rear unit) located on the last car of a train and a front-of-train unit (front unit) located in the cab of the locomotive controlling the train. An EOT system is linked by radio signals that will automatically transmit an emergency brake signal from the controlling locomotive to the rear of the train when an emergency brake application is initiated. The system additionally allows for the engineer in the controlling locomotive to manually activate a switch which sends a radio signal to the rear unit EOT device that is tied into the air brake system, opens an internal valve, and initiates an emergency brake application.

Due to the distance EOT device signals must travel on longer trains, the greater the risk that signal communications may be lost between the front and rear units. Thus, longer trains are more prone to experience EOT device loss of signal communications than shorter train consists. Other factors, such as the local topography and weather conditions, can present further challenges to EOT devices maintaining communications. A loss of communication between EOT devices can be temporary or permanent, and can result in an emergency air brake signal from the controlling locomotive taking longer to propagate through the entire train (effectively slowing down braking of the entire consist), or in the event of a train air brake line blockage, a loss of communication between the EOT devices will result in the emergency signal not being transmitted to the rear EOT device, as evidenced by the fatal UP Granite Canyon accident that occurred on October 4, 2018.

Accordingly, this Safety Advisory recommends that railroads implement technologies, policies, procedures, and any necessary hardware enhancements to ensure two-way EOT devices maintain continuous and undisrupted communications to and from the front and rear units. Additionally, this Safety Advisory recommends that railroads develop, implement, and maintain clear rules to follow in the event of a loss of communication between EOT devices.

Protecting Against the Loss of Radio Communications Among Crew Members

Effective radio voice communications are crucial for ensuring the safety of railroad employees and train operations. A longer train can present a radio voice communication problem for an operating employee traveling a long distance away from the lead locomotive. Portable radio handsets generally used might not have sufficient radio signal strength to provide clear communication over great distances or undulating topography. This problem is particularly concerning during emergency situations, where clear communication is critical. For instance, if an operating employee is injured and unable to contact the locomotive engineer, delays in getting timely aid to the operating employee may occur.

As a result, this Safety Advisory recommends that railroads adopt enhanced technologies and, as necessary, procedures for maintaining radio voice communications with a contingency plan if voice communications are lost between operating employees.

III. Employee Training and Qualification Considerations

Training Generally

The potential complexities involved with the operation of longer trains make it particularly critical that locomotive engineers (and all other crew members) are adequately trained and qualified to safely perform their duties. FRA is concerned that certified locomotive engineers may receive basic train handling training that was typically satisfactory for historical operations over particular territories, but given railroads' current increased operation of longer trains, such training may no longer be adequate. FRA reminds railroads of the regulatory requirement at 49 CFR 240.211(a) for railroads to, prior to initially certifying or recertifying any person as a locomotive engineer, determine that the person has demonstrated the skills necessary to safely operate locomotives or trains in the most demanding class or type of service that the person will be permitted to perform. In the context of longer trains, the engineer must be adequately trained in their operation and demonstrate an ability to safely do so prior to being called for such operation. For example, an engineer who has safely operated a 100-car consist over a particular territory for the past five years, but has never been trained and qualified on a longer consist, should not be called to operate a 200-car train without additional training on the operational complexities involved.

A locomotive engineer cannot be expected to safely operate in a more demanding service without proper additional training that covers the unique challenges and complexities those trains present. This training concern extends to the designated supervisors of locomotive engineers, who are responsible for understanding these territories, operations, and associated risks, and are expected to be involved in the training, testing, and qualifying of locomotive engineers.

Part 240 Locomotive Engineer Certification Programs

Appendix B to 49 CFR part 240 outlines the procedures that railroads must describe in their locomotive engineer certification programs, and the level of detail required for the training, qualification, and certification of locomotive engineers. Accordingly, FRA expects each railroad to design its program to address that railroad's specific operations and FRA expects railroads to adjust their programs as the nature or circumstances of operations change. Specifically, if a railroad creates a more demanding operating environment through the operation of longer trains, that railroad's locomotive engineer certification program must be updated to reflect that more demanding environment. For this reason, FRA recommends that each railroad with a submitted program, review whether updates to their programs are necessary to ensure: (1) the complexities of that railroad's operations are adequately addressed in the program, and (2) its employees are adequately trained and qualified to operate in the most demanding service. FRA notes that the use of distributed power and energy management systems typically involved in longer train operations place new demands on locomotive engineers and, as such, those employees must be trained and qualified on these additional complexities.

Part 217 Operational Testing

Under 49 CFR part 217, railroads are required to conduct operational tests. These operational tests are vital for determining that employees are

properly trained and fully aware of the rules and regulations governing safe operations. By identifying and addressing any potential training and compliance issues revealed by effective operational testing of longer trains, railroads can mitigate the potential risk of accidents and incidents. As new operations and technology are introduced, operational testing must be adjusted accordingly.

IV. Blocked Public Highway-Rail Grade Crossings

Blocked crossings occur when trains occupy highway-rail grade crossings and impede the flow of motor vehicle or pedestrian traffic over railroad tracks for extended periods of time. Blocked crossings pose numerous potential safety risks—frustrated individuals may be tempted to crawl, on, over, under, or between stopped railcars and blocked crossings can hinder emergency services' access to individuals in need of fire, police, or EMS assistance. Residents of communities through which railroads operate often rely on specific highway-rail grade crossings for daily commutes and other essential activities. Local knowledge of these crossings has developed over time, allowing community members to navigate through those crossings safely and efficiently. However, longer trains may, in certain instances, mean that trains are occupying these crossings for longer periods, potentially blocking access to homes, hospitals, schools, or businesses, and causing unexpected disruptions. Local emergency responders, such as police, fire, and ambulance services, can be severely impacted if emergency responders must find an alternate route when a train is blocking a crossing or if there is no alternative route.

Longer trains may also present challenges for pedestrians as the trains occupy pedestrian crossings for longer periods of time. Blocked crossings near schools are especially critical safety hazards due to the potential for children to cut through the idling trains.

Depending on the length of time that a crossing is blocked, the type of vehicles at a blocked crossing, and the configuration of the highway, motor vehicle drivers could be expected to take greater risks and commit dangerous maneuvers in an attempt to seek an alternate route. Motor vehicle drivers may also be more tempted to ''outrun the train'' by speeding to cross the tracks before the oncoming train reaches the crossing, particularly at locations that are frequently blocked by trains. Although trains of any length may block highway-rail grade crossings for a variety of reasons, the operation of longer trains may, in certain instances, exacerbate the impact of blocked crossings on communities. Accordingly, FRA recommends that railroads identify geographic areas with highway-rail grade crossings that could be impacted by longer trains, and work with local communities and emergency responders to identify and implement methods of preventing, or at least mitigating, the impacts of such blockages. These actions could include: identifying alternative routes for critical emergency response needs, establishing and maintaining clear lines of communication between the railroad and local authorities, or developing protocols for resolving concerns surrounding emergency response and blocked crossings.

V. Recommended Actions

Due to the complexities involved in the operation of longer trains, and to ensure the safety of the Nation's railroads, their employees, and the general public, FRA recommends that freight railroads take the following actions:

1. Review ABTH rules, or supplements, to ensure those rules adequately address the complexities associated with the railroad's operation of longer trains.
2. Implement technologies, policies, procedures, and/or any necessary hardware enhancements to ensure two-way EOT devices maintain undisrupted communications to and from the head-end and rear-end units. Develop, implement, and maintain clear policies, procedures, and rules that address instances of the loss of communications between EOT devices.
3. Adopt enhanced technologies and/or procedures for maintaining radio voice communications with a contingency plan if voice communications are lost between operating employees.
4. Identify changes to crew training, train handling procedures, train makeup, DPU requirements, limitations to length or tonnage, speed restrictions, track, mechanical, and brake inspection and maintenance requirements necessary to ensure safe operations of longer trains.
5. Review, and update as necessary, each railroad's current 49 CFR part 240 locomotive engineer certification program to ensure the program addresses all levels of operations, including the operation of longer trains.
6. Review and evaluate existing operational testing data as required by 49 CFR 217.9(e) relevant to the operation of longer trains. If longer train operations are conducted, or if any potential training or compliance issues are identified, consider increasing the frequency of operational testing and/or modifying the types of operational testing performed to address those deficiencies.
7. Identify geographic areas that could be impacted by longer trains at highway-rail grade crossings, take action to minimize blocked crossings by considering train length when taking any action that causes any part of a train to occupy a crossing, and work with local communities and emergency responders to prevent or at least mitigate the impacts of blocked crossings should they occur.
8. Conduct post-accident simulator evaluations and assign accurate primary and contributing cause codes for reportable and accountable accidents and incidents. A detailed narrative is basic to an understanding of the factors leading to, and the consequences arising from, an accident.

FRA encourages freight railroads to take actions consistent with the preceding recommendations. FRA may modify this Safety Advisory 2023–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads, including pursing other corrective measures under its rail safety authority.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–09239 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0096]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ATOTI (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders

or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0096 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0096 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0096, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ATOTI is:

—Intended Commercial Use of Vessel: ''Passenger vessel.''
—Geographic Region Including Base of Operations: ''Hawaii.'' (Base of Operations: Honolulu, HI)
—Vessel Length and Type: 46.8′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0096 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0096 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09281 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0097]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: COOL BREEZE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0097 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search

MARAD–2023–0097 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0097, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel COOL BREEZE is:

—*Intended Commercial Use of Vessel:* ''*Limited passenger charter.*''
—*Geographic Region Including Base of Operations:* ''Puerto Rico, Florida.'' (Base of Operations: St. Thomas, USVI)
—*Vessel Length and Type:* 65′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0097 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0097 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09282 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0091]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: OBSIDIAN (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0091 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0091 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0091, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel OBSIDIAN is:

—*Intended Commercial Use of Vessel:* ''Boat tours.''
—*Geographic Region Including Base of Operations:* ''Wisconsin.'' (Base of Operations: Fish Creek, WI)
—*Vessel Length and Type:* 22′ Motor (Rigid Inflatable Boat)

The complete application is available for review identified in the DOT docket as MARAD 2023–0091 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0091 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09288 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0092]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: HONEST TUNE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0092 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0092 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0092, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel HONEST TUNE is:

—*Intended Commercial Use of Vessel*: ''Sightseeing and history tours.''

—*Geographic Region Including Base of Operations:* ''South Carolina.'' (Base of Operations: Charleston, SC)

—*Vessel Length and Type:* 39.9′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0092 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0092 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(*Authority:* 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09284 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0089]

Coastwise Endorsement Eligibility Determination for a Foreign-built Vessel: LIBERTY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0089 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0089 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0089, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LIBERTY is:

—*Intended Commercial Use of Vessel:* ''Crewed yacht charters, 4–8 hours. Uninspected passenger vessel carrying six or fewer passengers for hire.''

—*Geographic Region Including Base of Operations:* ''Washington.'' (Base of Operations: Seattle, WA)

—*Vessel Length and Type:* 60′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0089 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0089 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09286 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0098]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: HANA HOU (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0098 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0098 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0098, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit

comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel HANA HOU is:

—*Intended Commercial Use of Vessel:* ''Owner intends to use the vessel as a platform for beautiful, high end and sunset, whale watching and bay charters on Maui.''

—*Geographic Region Including Base of Operations:* ''Hawaii.'' (Base of Operations: Lahaina Harbour, HI)

—*Vessel Length and Type:* 50.2′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0098 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0098 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09283 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0099]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: RUNNING HIGHER (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0099 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0099 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0099, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel RUNNING HIGHER is:

—Intended Commercial Use of Vessel: ''Owner will operate vessel as a short-term (day sail/sunset sail) catamaran sailing experience for passengers for hire. The owner anticipates operating approx. 2–3 days a week between months of December and May.''

—Geographic Region Including Base of Operations: ''Florida.'' (Base of Operations: Punta Gorda, FL)

—Vessel Length and Type: 38.5′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2023–0099 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0099 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09289 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2023–0088]

Request for Comments on the Renewal of a Previously Approved Information Collection: Information To Determine Seamen's Reemployment Rights—National Emergency

AGENCY: Maritime Administration.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0526 (Information to Determine Seamen's Reemployment Rights—National Emergency) will be used to determine if U.S. civilian mariners are eligible for reemployment rights under the Maritime Security Act of 1996. The Paperwork Reduction Act of 1995 requires that we publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments must be submitted on or before July 3, 2023.

ADDRESSES: You may submit comments identified by Docket No. DOT–MARAD–2023–0088 through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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.

FOR FURTHER INFORMATION CONTACT: Matthew Mueller, 202–366–7173, *careersafloat@dot.gov.* U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, MAR–650, Mail Stop 2, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Information to Determine Seamen's Reemployment Rights—National Emergency.

OMB Control Number: 2133–0526.

Type of Request: Renewal of a previously approved collection.

Abstract: This information collection is needed in order to implement provisions of the Maritime Security Act of 1996. These provisions grant re-employment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for re-employment rights and other benefits.

Respondents: Individual U.S. citizen mariners, currently working ashore, who possess U.S. Coast Guard merchant mariner credentials and serve on U.S. vessels in time of national emergency.

Affected Public: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Hours per Response: 1.

Annual Estimated Total Annual Burden Hours: 10.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09280 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0095]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SOUTHERN STAR (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0095 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0095 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0095, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SOUTHERN STAR is:

—*Intended Commercial Use of Vessel:* ''Day sailing excursions on Pensacola Bay and near coastal waters of the Florida and Alabama Gulf Coast. Maximum 12 passengers to be carried during day time operations.''

—*Geographic Region Including Base of Operations:* ''Florida, Alabama.'' (Base of Operations: Gulf Breeze, FL)

—*Vessel Length and Type:* 46.8′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2023–0095 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0095 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09291 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0094]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SOUTHERN CROSS (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0094 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0094 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0094, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SOUTHERN CROSS is:

—*Intended Commercial Use of Vessel:* ''Will be using this vessel for passenger tour charters.''
—*Geographic Region Including Base of Operations:* ''District of Columbia, Maryland, Virginia.'' (Base of Operations: Washington, DC)
—*Vessel Length and Type:* 38′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0094 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0094 or visit the Docket Management Facility (see **ADDRESSES** for

hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09290 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0093]

Coastwise Endorsement Eligibility Determination for a Foreign-built Vessel: KNOT–A–CARE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0093 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0093 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0093, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KNOT–A–CARE is:

—*Intended Commercial Use of Vessel:* ''To teach ASA sailing lessons. There will be 6 or fewer passengers on the vessel at all times during commercial use.''

—*Geographic Region Including Base of Operations:* ''Illinois, Wisconsin, Indiana, Michigan.'' (Base of Operations: Crystal Lake II, Lake Michigan, IL)

—*Vessel Length and Type:* 33′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0093 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0093 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09285 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0090]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SPIRITO DI VENEZIA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 1, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0090 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0090 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0090, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SPIRITO DI VENEZIA is:

—*Intended Commercial Use of Vessel:* ''Passenger charter, 12 or fewer guests.''

—*Geographic Region Including Base of Operations:* ''Florida, Georgia, South Carolina, North Carolina.'' (Base of Operations: Sanford, FL)

—*Vessel Length and Type:* 39.5′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0090 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0090 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject

heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–09292 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: TreasuryDirect System

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before July 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: TreasuryDirect.

OMB Number: 1530–0071.

Abstract: The information collected in the electronic system is requested to establish a new account and process any associated transactions.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 3,549,700.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 151,070.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 26, 2023.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2023–09230 Filed 5–1–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing the name of a person whose property and interests in property have been unblocked and who has been removed from the SDN List.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov*).

Notice of OFAC Actions

A. On April 27, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. GOMEZ ARIAS, Luis Lorenzo, Portal Calimaya 662, Colonia Los Portales, Ciudad De Puerto Vallarta, Jalisco, Mexico; DOB 03 Feb 1970; Electoral Registry No. GMARLS70020314H800 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(ii) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (December 17, 2021) (E.O. 14059) for being or having been a leader or official of JM Providers Office, S.A. de C.V. and Servicios Administrativos Fordtwoo, S.A. de C.V., persons sanctioned pursuant to E.O. 14059.

2. GONZALEZ VILLEGAS, Ian Jassiel, Calle Pedro Moreno 113, Colonia Toluquilla, San Pedro Tlaquepaque, Jalisco, Mexico; DOB 21 Apr 1981; POB Distrito Federal, Mexico; nationality Mexico; Gender Male; C.U.R.P. GOVI810421HDFNKN02 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Corporativo Title I, S.A. de C.V., Corporativo

TS Business Inc, S.A. de C.V., and TS Business Corporativo, S.A. de C.V., persons sanctioned pursuant to E.O. 14059.

3. LELO DE LARREA VENTIMILLA, Horacio Edmundo (a.k.a. LELO DE LA REA, Horacio), Calle 20 de Noviembre 390, Colonia del Toro, Puerto Vallarta, Jalisco 48296, Mexico; Valle Kino 179, Colonia Valle Dorado, Bahia de Banderas, Nayarit, Mexico; DOB 03 Oct 1973; POB Distrito Federal, Mexico; nationality Mexico; Gender Male; R.F.C. LEVH731003EP3 (Mexico); C.U.R.P. LEVH731003HDFLNR03 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Cartel de Jalisco Nueva Generacion (CJNG) and Servicios Administrativos Fordtwoo, S.A. de C.V., persons sanctioned pursuant to E.O. 14059.

4. LUQUIN RODRIGUEZ, Brayan Moises, Calle Mezquitan 194, Barrio Santa Maria, Puerto Vallarta, Jalisco 48325, Mexico; Las Palmas 35, Colonia Nuevo Vallarta, Jarretaderas, Nayarit, Mexico; DOB 06 Nov 1992; POB Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. LURB921106HJCQDR01 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG and Servicios Administrativos Fordtwoo, S.A. de C.V., persons sanctioned pursuant to E.O. 14059.

5. PADILLA ZARATE, Clemente, Calle Pedro Moreno 113, Colonia Toluquilla, San Pedro Tlaquepaque, Jalisco, Mexico; Alvaro Obregon 993, oblatos, Guadalajara, Jalisco 44380, Mexico; Josefa Ortiz 568, Guadalajara, Jalisco 44380, Mexico; DOB 01 May 1978; POB Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. PAZC780501HJCDRL09 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Corporativo Title I, S.A. de C.V., Corporativo TS Business Inc, S.A. de C.V., and TS Business Corporativo, S.A. de C.V., persons sanctioned pursuant to E.O. 14059.

6. PARDO ESPINO, Eduardo, Privada Coyules 113, Barrio Santa Maria, Puerto Vallarta, Jalisco, Mexico; DOB 04 Apr 1979; POB Tinguindin, Michoacan de Ocampo, Mexico; nationality Mexico; Gender Male; C.U.R.P. PAEE790404HMNRSD00 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production. Also designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG and Servicios Administrativos Fordtwoo, S.A. de C.V., persons sanctioned pursuant to E.O. 14059.

7. RIVAS SANCHEZ, Pedro, Calle Isla Antigua 3017, Colonia Jardines De La Cruz, Guadalajara, Jalisco, Mexico; DOB 08 Mar 1988; POB Jalisco, Mexico; Gender Male; C.U.R.P. RISP880308HJCVND03 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Corporativo TS Business Inc, S.A. de C.V. and TS Business Corporativo, S.A. de C.V., persons sanctioned pursuant to E.O. 14059.

Entities

1. AKA INTEGRAL SERVICES, S. DE R.L. DE C.V., Bahia de Banderas, Nayarit, Mexico; Organization Established Date 03 Mar 2012; Organization Type: Construction of buildings; Folio Mercantil No. 1596 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Horacio Edmundo Lelo de Larrea Ventimilla, a person sanctioned pursuant to E.O. 14059.

2. ASESORES Y PROMOTORES ACG, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 17 Sep 2015; Organization Type: Other business support service activities n.e.c.; Folio Mercantil No. 92430 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Pedro Rivas Sanchez, a person sanctioned pursuant to E.O. 14059.

3. ATLANTIC DIAMOND GROUP, S.A. DE C.V., Bucerias, Nayarit, Mexico; Organization Established Date 13 Nov 2015; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. 2106 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Lorenzo Gomez Arias, a person sanctioned pursuant to E.O. 14059.

4. BESTHINGS, S.A. DE C.V., Cancun, Quintana Roo, Mexico; Organization Established Date 26 Jul 2018; Organization Type: Travel agency activities; R.F.C. BES180726LM7 (Mexico); Folio Mercantil No. N–2018063459 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Eduardo Pardo Espino, a person sanctioned pursuant to E.O. 14059.

5. BUSSINES CORPORATIVO T SERVICE INC, S.A. DE C.V., Josefa Ortiz 568, Guadalajara, Jalisco, Mexico; Organization Established Date 09 Sep 2014; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. 85029 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Ian Jassiel Gonzalez Villegas, a person sanctioned pursuant to E.O. 14059.

6. CONSTRUCTORES B2, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 05 Dec 2014; Organization Type: Other business support service activities n.e.c.; Folio Mercantil No. 86548 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Clemente Padilla Zarate, a person sanctioned pursuant to E.O. 14059.

7. CORPORATIVO BUSSINES MX INSIDER, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 02 Dec 2014; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. 86132 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Clemente Padilla Zarate and Ian Jassiel Gonzalez Villegas, persons sanctioned pursuant to E.O. 14059.

8. CORPORATIVO SOPORTE LEGAL RECOVERY, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 23 Oct 2014; Organization Type: Other business support service activities n.e.c.; Folio Mercantil No. 85329 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Ian Jassiel Gonzalez Villegas, a person sanctioned pursuant to E.O. 14059.

9. ENVIGH, S. DE R.L. DE C.V., Bahia de Banderas, Nayarit, Mexico; Organization Established Date 19 Jun 2019; Organization Type: Real estate activities on a fee or contract basis [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Horacio Edmundo Lelo de Larrea Ventimilla, a person sanctioned pursuant to E.O. 14059.

10. MAGNISERVIA, S.A. DE C.V., Puerto Vallarta, Jalisco, Mexico; Organization Established Date 10 Jun 2014; Organization Type: Other business support service activities n.e.c.; Folio Mercantil No. 16557 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, CJNG, a person sanctioned pursuant to E.O. 14059.

11. NT INSURANCE CORPORATIVO, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 07 Nov 2014; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. 85324 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Ian Jassiel Gonzalez Villegas, a person sanctioned pursuant to E.O. 14059.

12. PRODUZIONI PECA, S. DE R.L. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 25 Jun 2019; Organization Type: Non-specialized

wholesale trade; R.F.C. PPE190625B5A (Mexico); Folio Mercantil No. N–2019080180 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Eduardo Pardo Espino, a person sanctioned pursuant to E.O. 14059.

13. RESGUARDO DE VALORES Y SERVICIOS INTEGRALES RSVI, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 23 Sep 2015; Organization Type: Travel agency activities; Folio Mercantil No. 92484 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Pedro Rivas Sanchez, a person sanctioned pursuant to E.O. 14059.

14. RH LITMAN, S. DE R.L. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 11 Jun 2019; Organization Type: Other business support service activities n.e.c.; Folio Mercantil No. N–2019055144 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Eduardo Pardo Espino, a person sanctioned pursuant to E.O. 14059.

15. SERVICIOS ADMINISTRATIVOS DANTWOO, S.A. DE C.V., Bahia de Banderas, Nayarit, Mexico; Organization Established Date 26 Mar 2013; Organization Type: Other business support service activities n.e.c.; Folio Mercantil No. 1723 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Eduardo Pardo Espino, a person sanctioned pursuant to E.O. 14059.

16. SOCIEDAD SPA PENINSULA, S. DE R.L. DE C.V., Francisco Medina Ascencio No.2485, Zona Hotelera Norte, Puerto Vallarta, Jalisco 48333, Mexico; Guadalajara, Jalisco, Mexico; Organization Established Date 11 May 2007; Organization Type: Hairdressing and other beauty treatment; Folio Mercantil No. 40733 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Eduardo Pardo Espino, a person sanctioned pursuant to E.O. 14059.

17. SUNCAN MEXICO, S. DE R.L. DE C.V., Bahia de Banderas, Nayarit, Mexico; Organization Established Date 19 Jun 2019; Organization Type: Real estate activities on a fee or contract basis [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Horacio Edmundo Lelo de Larrea Ventimilla, a person sanctioned pursuant to E.O. 14059.

18. T SERVICE BUSSINES INC, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 09 Sep 2014; Organization Type: Other business support service activities n.e.c.; Folio Mercantil No. 85498 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Ian Jassiel Gonzalez Villegas, a person sanctioned pursuant to E.O. 14059.

19. TRADOS COMERCIO, S. DE R.L. DE C.V., Bahia de Banderas, Nayarit, Mexico; Organization Established Date 19 Jun 2019; Organization Type: Construction of buildings; Folio Mercantil No. N–2019051660 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Horacio Edmundo Lelo de Larrea Ventimilla, a person sanctioned pursuant to E.O. 14059.

B. On April 27, 2023, OFAC determined that circumstances no longer warrant the inclusion of the following person on the SDN List and that their property and interests in property are no longer blocked under E.O. 14059.

1. MORENO LOPEZ, Ervin Rene, Canton La Candelaria Z.0, La Democracia, Huehuetenango, Guatemala; DOB 26 Jan 1976; POB Guatemala; nationality Guatemala; Gender Male; NIT # 1654613K (Guatemala); C.U.I. 1596467901301 (Guatemala) (individual) [ILLICIT–DRUGS–EO14059].

Dated: April 27, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–09294 Filed 5–1–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation and Form Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning applications and renewal of enrollment for those who are seeking actuary status under ERISA, and regulations governing the performance of actuarial services under the employee retirement income security act of 1972.

DATES: Written comments should be received on or before July 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–0951 or Forms 5434, 5434–A, and TD 9517/REG–159704–03.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment, Application for Renewal of Enrollment, and Regulations Governing the Performance of Actuarial Services Under the Employee Retirement Income Security Act of 1972.

OMB Number: 1545–0951.

Form and Regulation Number: 5434, 5434–A, and TD 9517/REG–159704–03.

Abstract: Form 5434 is used to apply for enrollment to perform actuarial services under the Employee Retirement income Security Act of 1974 (ERISA). Form 5434–A is used to renew enrollment every three years to perform actuarial services under (ERISA). The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services. The regulations require that records be kept that verify satisfaction of requirements, and certificates of completion education requirements.

Current Actions: There are no changes to the forms or regulations at his time. However, the agency is updating the number of respondents based on its most recent filing data.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and households.

Form 5434

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 1 hour.

Estimated Annual Burden Hours: 150.

Form 5434 A

Estimated Number of Respondents: 1,166.

Estimated Time per Respondent: .50 hour.

Estimated Annual Burden Hours: 600.

TD 9517/REG–159704–03

Estimated Number of Respondents/ Recordkeepers: 3,500.

Estimated Time per Respondent: .25 hour.

Estimated Annual burden hours: 875.

Total Estimated Annual Burden: 1,625 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 27, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–09255 Filed 5–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting comments on Forms W–2/W–3 Series

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3PR, W–3cPR, and W–3SS.

DATES: Written comments should be received on or before July 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–0008'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: W–2 (Wage and Tax Statement), W–2c (Corrected Wage and Tax Statement), W–2AS

(American Samoa Wage and Tax Statement), W–2GU (Guam Wage and Tax Statement), W–2VI (U.S. Virgin Islands Wage and Tax Statement), W–3 (Transmittal of Wage and Tax Statements), W–3c (Transmittal of Corrected Wage and Tax Statements), W–3PR (Informe de Comprobantes de Retención Transmittal of Withholding Statements), W–3c PR (Transmision de Comprobantes de Retención Corregidos, Transmittal of Corrected Wage and Tax Statements), and W–3SS (Transmittal of Wage and Tax Statements).

OMB Number: 1545–0008.

Form Numbers: W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3PR, W–3c, W–3cPR, and W–3SS.

Abstract: Employers report income and withholding information on Form W–2. Individuals use Form W–2 to prepare their income tax returns. Forms W–2AS, W–2GU and W–2VI are variations of Form W–2 for use in U.S. possessions. The Form W–3 series is used to transmit W–2 series forms to the Social Security Administration. Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3, and W–3PR.

Current Actions: There are no material changes in the paperwork burden previously approved by OMB. However, the estimated number of responses has increase based on the number of taxpayers filing the forms.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, or households, not-for-profit institutions, farms, and Federal, state local or tribal governments.

Estimated Number of Respondents: 301,441,008.

Estimated Time per Respondent: varies.

Estimated Total Annual Burden Hours: 150,594,103.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–09273 Filed 5–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 18, 2023.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Thursday, May 18, 2023, from 2:00 p.m. to 4:30 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussions involving subcommittee 1 and 2 Issue 66142 VITA/TCE Training Materials Review and Issue 66143 Taxpayer Communications—Recordkeeping. Subcommittee 2 Issue 55988 Allow taxpayers to fill out a form stating their issue.

Dated: April 25, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–09104 Filed 5–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Directed Withholding and Deposit Verification and Application for Central Withholding Agreement Less than $10,000.

DATES: Written comments should be received on or before July 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–2102, Forms 13920—Directed Withholding and Deposit Verification and 13930—Application for Central Withholding Agreement'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Directed Withholding and Deposit Verification, and Application for Central Withholding Agreement Less than $10,000.

OMB Number: 1545–2102.

Form Number: Form 13920 and 13930.

Abstract: Central Withholding Agreement (CWA) is a tool that can help nonresident entertainers and athletes who plan to work in the United States and provides for withholdings at a graduated rate. Form 13930 will be used by an individual who wishes to have a Central Withholding Agreement (CWA). Starting October 1, 2018, NRAAEs must have U.S. gross income of at least $10,000 (including income estimated on the CWA application budget) before the NRAAE is eligible to apply for a withholding agreement using Form 13930. The Internal Revenue Service has temporarily waived the income requirement for which form to use when applying for a CWA. Form 13930–A is currently unavailable. While the waiver is in effect, individuals with income below $10,000 can apply for a CWA using Form 13930. Form 13920 is used by withholding agents to verify to IRS that required deposits were made and give the amount of such deposits.

Current Actions: Form 13930–A is being removed from the above OMB approval number.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and non-profit institutions.

Form 13930

Estimated Number of Responses: 3,000.

Estimated Time per Response: 12 hours.

Form 13920

Estimated Number of Responses: 8,100.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours (2 forms): 38,700 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 27, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–09252 Filed 5–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collect requirements related to the treatment of distributions to foreign persons under sections 367(e)(1) and 367(e)(2).

DATES: Written comments should be received on or before July 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–1487 or TD 9704.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

OMB Number: 1545–1487.

Regulation Project Number: TD 9704.

Abstract: Section 367(e)(1) provides that, to the extent provided in regulations, a domestic corporation must recognize gain on a section 355 distribution of stock or securities to a foreign person. Section 367(e)(2) provides that section 337(a) and (b)(1) does not apply to a section 332 distribution by a domestic corporation to a foreign parent corporation that owns 80 percent of the domestic liquidating corporation (as described in section 337(c)). Section 6038B(a) requires a U.S. person who transfers property to a foreign corporation in an exchange described in sections 332 or 355, among other sections, to furnish to the Secretary of the Treasury certain information with respect to the transfer, as provided in regulations.

The final regulations under section 367(e)(1) require gain recognition only for distributions of the stock or securities of foreign corporations to foreign persons. The final regulations under section 367(e)(2) generally require gain recognition when a domestic corporation liquidates into its foreign parent corporation; the regulations generally do not require gain recognition when a foreign corporation liquidates into its foreign parent corporation.

Document (TD 9704) contains final and temporary regulations relating to the consequences to U.S. and foreign persons for failing to satisfy reporting obligations associated with certain transfers of property to foreign corporations in nonrecognition exchanges. TD 9704 permits transferors to remedy ''not willful'' failures to file, and ''not willful'' failures to comply with the terms of, liquidation documents required under section 367(e)(2). In addition, it modifies the reporting obligations under section 6038B associated with transfers that are subject to section 367(e)(2). Further, TD 9704 provides similar rules for certain transfers that are subject to section 367(a). The regulations are necessary to update the rules that apply when a U.S. or foreign person fails to file required documents or statements or satisfy reporting obligations. The regulations affect U.S. and foreign persons that transfer property to foreign corporations in certain non-recognition exchanges.

Current Actions: There are no changes being made to the regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 414.

Estimated Time per Respondent: 5 hours, 58 minutes.

Estimated Total Annual Burden Hours: 2,471 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 27, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–09253 Filed 5–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of 13 vessels identified as blocked property that have been removed from OFAC's SDN List because they were determined to be no longer operating or to have had their original construction cancelled. Property and interests in property relating to these vessels are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions relating to the vessels.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 12, 2012 and March 14, 2013, OFAC identified the following 13 vessels as property in which a blocked person has an interest pursuant to Executive order 13599 of February 5, 2012, ''Blocking Property of the Government of Iran and Iranian Financial Institutions.'' On April 27, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following vessels are no longer blocked because the vessels were determined to be no longer operating or to have had their original construction cancelled, and therefore the vessels have been removed from the SDN List.

Vessels

1. NAINITAL (f.k.a. MIDSEA; f.k.a. MOTION; f.k.a. NAJM) (T2DR4) Crude Oil Tanker 298,731DWT 156,809GRT None Identified flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9079092; MMSI 572442210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

2. NYOS (f.k.a. BRAWNY; f.k.a. MARIGOLD; f.k.a. NABI) (T2DS4) Crude Oil Tanker 298,731DWT 156,809GRT None Identified flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9079080; MMSI 572443210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

3. SANCHI (f.k.a. GARDENIA; f.k.a. SEAHORSE; f.k.a. SEPID) (T2EF4) Crude Oil Tanker 164,154DWT 85,462GRT None Identified flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9356608; MMSI 572455210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

4. ATLANTIC (f.k.a. SEAGULL) Crude Oil Tanker Liberia flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9107655 (vessel) [IRAN].

5. AURA (f.k.a. OCEAN PERFORMER) Crude Oil Tanker Mongolia flag; Former Vessel Flag Liberia; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9013749 (vessel) [IRAN].

6. BICAS (f.k.a. GLAROS) Crude Oil Tanker Liberia flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9077850 (vessel) [IRAN].

7. BRIGHT (f.k.a. ZAP) Crude Oil Tanker Mongolia flag; Former Vessel Flag Liberia; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9005235 (vessel) [IRAN].

8. CARIBO (f.k.a. NEREYDA) Crude Oil Tanker Panama flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9011246 (vessel) [IRAN].

9. YANGZHOU DAYANG DY905 (a.k.a. YARD NO. DY905 YANGZHOU D.) LPG Tanker 11,750DWT 8,750GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9575424 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

10. IRAN FAHIM Chemical/Products Tanker 34,900DWT 26,561GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9286140 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

11. IRAN FALAGH Chemical/Products Tanker 34,900DWT 25,000GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9286152 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

12. IMICO NEKA 456 (a.k.a. YARD NO. 456 IRAN MARINE) Shuttle Tanker 63,000DWT 40,800GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9404558 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

13. IMICO NEKA 457 (a.k.a. YARD NO. 457 IRAN MARINE) Shuttle Tanker 63,000DWT 40,800GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9404560 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Dated: April 27, 2023.

Andrea M. Gacki

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–09274 Filed 5–1–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Departmental Offices (DO) Information Collection Request

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on revisions to an existing information collection, as required by the Paperwork Reduction Act of 1995. The Office of the Fiscal Assistant Secretary, within the Department of the Treasury, is soliciting comments concerning the application, reports, and recordkeeping for the Direct Component and the Centers of Excellence Research Grants Programs under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The information collection for which comments are solicited are already a part of the approved collection for RESTORE Act grants, including the two BABAA Waiver Request Forms, which implement the Build America, Buy America Act (''BABAA'').

DATES: Written comments must be received on or before July 3, 2023 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by electronic mail to *restoreact@treasury.gov* in the Office of Gulf Coast Restoration.

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Application, Reports, and Recordkeeping for the Direct Component and the Centers of Excellence Research Grants Program under the RESTORE Act.

OMB Control Number: 1505–0250.

Type of Review: Revision of a currently approved collection.

Description: The Department of the Treasury administers the Direct Component and the Centers of Excellence Research Grants Program authorized under the RESTORE Act. Treasury awards grants for these two programs from proceeds in connection with administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act relating to the Deepwater Horizon Oil Spill and deposited into the Gulf Coast Restoration Trust Fund. Direct Component grants are awarded to the States of Alabama, Louisiana, Mississippi, and Texas, and 23 Florida counties and 20 Louisiana parishes. Centers of Excellence grants are awarded to the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The information collection for both programs identifies the eligible recipients; describes proposed activities; determines an appropriate amount of funding; ensures compliance with the RESTORE Act, Treasury's regulations,

and Federal laws and policies on grants; tracks grantee progress; and reports on the effectiveness of the programs.

Section 70914(a) of BABAA prohibits Direct Component recipients (and subrecipients, as applicable) from using RESTORE Act funds to purchase foreign-sourced iron, steel, manufactured products, or construction materials unless Treasury approves a waiver pursuant to section 70914(b) of BABAA. On January 13, 2023, Treasury received emergency clearance from OMB to update the approved collection and add two new forms for recipients to submit requests to waive the new domestic preference requirements under BABAA. Treasury requested an emergency clearance for the forms to be completed by January 13, 2022, which was the expiration date of Treasury OGCR's six-month general applicability public interest adjustment period waiver and therefore was the effective date of BABAA requirements for RESTORE Act Direct Component program. The Agency was delayed in requesting the clearance from OIRA because the required waiver information that must be collected by agencies for cross-posting waivers to the GSA-managed Made in America Office (MIAO) website was finalized on December 8, 2022. Posting waivers on the centralized waiver transparency website is a requirement for federal agencies to be compliant with the implementation of BABAA. Treasury now seeks clearance through the normal 60-day public comment process for clearance under the Paperwork Reduction Act of the updated information collection as required by 5 CFR 1320.8(d).

Treasury has also made substantive changes to the Multiyear Implementation Plan Narrative Form through a consolidation of application questions to reduce requests for duplicative information and revised the requirements of the Milestones and Measures Application Form, Milestones Report and Status of Performance Report that reduces the burden on the applicant to demonstrate progress made to achieve the scope of work. No other changes to the information collection are proposed by Treasury at this time.

The revised application forms and supplemental information may be obtained on Treasury's RESTORE Act website at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act.*

Form Number: None.

Affected Public: State and local governments.

Estimated Number of Respondents: 52.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 563.

Estimated Time per Response: 11.2 hours.

Estimated Total Annual Burden Hours: 6,310.

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. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Public Law 117–58, sec. 70901–52 included in the Infrastructure Investment and Jobs Act (''IIJA''), Public Law . 117–58 that was signed into law on November 15, 2021.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–09256 Filed 5–1–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more vessels that have that have been updated on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these vessels remain blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On April 27, 2023, OFAC published updated information for the following vessels on OFAC's SDN List, which remain blocked under the relevant sanctions authorities listed below.

Vessels

1. AMBER (f.k.a. FREEDOM; f.k.a. HARAZ) (5IM 597) Crude Oil Tanker 317,356DWT 163,660GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357406; MMSI 677049700 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 ''Blocking Property of the Government of Iran and Iranian Financial Institutions,'' of February 5, 2012, 77 FR 6659, 3 CFR, 2012 Comp., p. 215 (E.O. 13599), as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

2. ARGO I (f.k.a. AMOL; a.k.a. ARGO 1; f.k.a. CASTOR; f.k.a. CHRISTINA; f.k.a. SILVER CLOUD) (T2EM4) Crude/Oil Products Tanker 99,094DWT 56,068GRT Iran flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9187667; MMSI 256843000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

3. DAN (f.k.a. JUSTICE) Crude Oil Tanker Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357729 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

4. DEEP SEA (f.k.a. DARAB) (9HEE9) Crude Oil Tanker 296,803DWT 160,576GRT

Iran flag; Former Vessel Flag Malta; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9218492; MMSI 256862000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

5. DERYA Crude Oil Tanker Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569700 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

6. DIAMOND II (f.k.a. DAMAVAND) (9HEG9) Crude Oil Tanker 297,013DWT 160,576GRT Iran flag; Former Vessel Flag Malta; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9218478; MMSI 256865000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

7. DINO I (f.k.a. INFINITY) (5IM411) Crude Oil Tanker Iran flag (NITC); Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569671 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

8. DIONA Crude Oil Tanker Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569695 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

9. DORE (f.k.a. COMPANION; f.k.a. DAL LAKE; f.k.a. DAVAR) (5IM 593) Crude Oil Tanker 317,850DWT 164,241GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357717; MMSI 677049300 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

10. DORENA (f.k.a. SKYLINE) (5IM632) Crude Oil Tanker Iran flag (NITC); Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569669 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

11. DOVER (f.k.a. DAYLAM) (9HEU9) Crude Oil Tanker 299,500DWT 160,576GRT Iran flag; Former Vessel Flag Malta; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9218466; MMSI 256872000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

12. DOWNY (f.k.a. DENA) (9HED9) Crude Oil Tanker 296,894DWT 160,576GRT Iran flag; Former Vessel Flag Malta; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9218480; MMSI 256861000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

13. DREAM II (f.k.a. DANESH; f.k.a. DECESIVE; f.k.a. LEADERSHIP) (5IM 592) Crude Oil Tanker 319,988DWT 164,241GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9356593; MMSI 677049200 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

14. DUNE Crude Oil Tanker Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569712 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

15. FELICITY (f.k.a. LEYCOTHEA; f.k.a. ORIENTAL) Crude Oil Tanker Iran flag; Former Vessel Flag Panama; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9183934 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

16. FOREST (f.k.a. FAEZ; f.k.a. FIANGA; f.k.a. MAESTRO; f.k.a. SATEEN) (T2DM4) Chemical/Products Tanker 35,124DWT 25,214GRT Iran flag; Former Vessel Flag Malta ; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9283760; MMSI 572438210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

17. FORTUNE (f.k.a. IRAN FAZEL) (9BAC) Chemical/Products Tanker 35,155DWT 25,214GRT Iran flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9283746; MMSI 422303000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

18. HALTI (f.k.a. HORIZON; f.k.a. HORMOZ; f.k.a. SCORPIAN) (9HEK9) Crude Oil Tanker 299,261DWT 160,930GRT Iran flag; Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9212890; MMSI 256870000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

19. HASNA (f.k.a. HARSIN; f.k.a. VALOR; f.k.a. ''MARINA'') (5IM600) Crude Oil Tanker 299,229DWT 160,930GRT Iran flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9212917; MMSI 677050000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

20. HEDY (f.k.a. HUWAYZEH) (9HEJ9) Crude Oil Tanker 299,242DWT 160,930GRT Iran flag; Former Vessel Flag Malta; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9212888; MMSI 256869000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

21. HELM (f.k.a. HIRMAND; f.k.a. HONESTY; f.k.a. MILLIONAIRE) (T2DZ4) Crude Oil Tanker 317,356DWT 163,660GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357391; MMSI 572450210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

22. HENNA (f.k.a. HALISTIC; f.k.a. HAMOON; f.k.a. LENA; f.k.a. TAMAR) (T2EQ4) Crude Oil Tanker 299,242DWT 160,930GRT Iran flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9212929; MMSI 572465210 (vessel)

[IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

23. HERBY (f.k.a. EXPLORER; f.k.a. HODA; f.k.a. HYDRA; f.k.a. PRECIOUS) (T2EH4) Crude Oil Tanker 317,356DWT 163,660GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9362059; MMSI 572458210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

24. HERO II (f.k.a. HADI; f.k.a. PIONEER; f.k.a. ZEUS) (T2EJ4) Crude Oil Tanker 317,355DWT 163,650GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tuvalu; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9362073; MMSI 572459210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

25. HILDA I (f.k.a. COURAGE; f.k.a. HOMA) (5IM 596) Crude Oil Tanker 317,367DWT 163,660GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357389; MMSI 677049600 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

26. HUGE (f.k.a. HATEF; f.k.a. MAJESTIC; f.k.a. ''GLORY'') (T2EG4) Crude Oil Tanker 317,367DWT 163,660GRT Iran flag; Former Vessel Flag Cyprus; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357183; MMSI 212256000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

27. HUMANITY (f.k.a. OCEAN NYMPH) Crude Oil Tanker Iran flag; Former Vessel Flag Panama; alt. Former Vessel Flag Mongolia; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9180281 (vessel) [IRAN].

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

28. NAVARZ (f.k.a. ELITE; f.k.a. NAPOLI; f.k.a. NOAH; f.k.a. VOYAGER) (T2DQ4) Crude Oil Tanker 298,731DWT 156,809GRT Iran flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Tanzania; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9079078; MMSI 572441210 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

29. SALINA (f.k.a. BLACKSTONE; f.k.a. SARV; f.k.a. SPLENDOUR) (9HNZ9) Crude Oil Tanker 163,870DWT 85,462GRT Iran flag; Former Vessel Flag Malta; alt. Former Vessel Flag Tuvalu; alt. Former Vessel Flag Seychelles; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9357377; MMSI 249257000 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

30. STREAM (f.k.a. FORTUN; f.k.a. SONATA; a.k.a. YARD NO. 1222 SHANGHAI WAIGAOQIAO) Crude Oil Tanker 318,000DWT 165,000GRT Iran flag; Former Vessel Flag Malta; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9569633 (vessel) [IRAN] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Identified on November 5, 2018 pursuant to E.O. 13599 as property in which the NATIONAL IRANIAN TANKER COMPANY has an interest.

Dated: April 27, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–09298 Filed 5–1–23; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 88 Tuesday,

No. 84 May 2, 2023

Part II

Department of Transportation

Federal Aviation Administration
Office of the Secretary
Federal Railroad Administration
Federal Motor Carrier Safety Administration
Federal Transit Administration

14 CFR Part 120

49 CFR Parts 40, 219, 240, et al.

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 120

Office of the Secretary

49 CFR Part 40

Federal Railroad Administration

49 CFR Parts 219, 240, and 242

Federal Motor Carrier Safety Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Part 655

[Docket DOT–OST–2021–0093]

RIN 2105–AE94

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs

AGENCY: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA); U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Transportation's regulated industry drug testing program to include oral fluid testing. This additional methodology for drug testing will give employers a choice that will help combat employee cheating on urine drug tests and provide a less intrusive means of achieving the safety goals of the program. In order for an employer to implement oral fluid testing under the Department's regulation, the U.S. Department of Health and Human Services will need to certify at least two laboratories for oral fluid testing, which has not yet been done. The final rule includes other provisions to update the Department's regulation and to harmonize, as needed, with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid established by the U.S. Department of Health and Human Services. In addition, this rule amends the FAA, FMCSA, FRA and FTA regulations to ensure consistency within the Department of Transportation and by removing or adjusting references to the word ''urine'' and/or add references to oral fluid, as well as removing or amending some definitions for conformity and to make other miscellaneous technical changes or corrections.

DATES: This final rule is effective on June 1, 2023.

FOR FURTHER INFORMATION CONTACT: For OST, Patrice M. Kelly, JD, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; *ODAPCwebmail@dot.gov.* For FAA, Nancy Rodriguez-Brown, Deputy Director, Office of Aerospace Medicine, Drug Abatement Division, AAM–800, FAA, 800 Independence Avenue SW, Washington, DC 20591 (telephone: 202–267–8442; *drugabatement@faa.gov*). For FMCSA, Bryan Price, Chief, Drug and Alcohol Programs Division, Office of Safety Programs, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 (telephone: 202–366–2995; email: *bryan.price@dot.gov*). For FRA, Gerald Powers, Drug and Alcohol Program Manager, Office of Railroad Safety—Office of Program Management, FRA RRS–25, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 (telephone: 202–493–6313; email: *gerald.powers@dot.gov*). For FTA, Iyon Rosario, Senior Drug and Alcohol Program Manager, Office of Transit Safety and Oversight (TSO), FTA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 (telephone: 202–366–2010; email: *iyon.rosario@dot.gov*).

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

This rulemaking is promulgated under the authority originally enacted in the Omnibus Transportation Employee Testing Act (OTETA) of 1991, codified at 49 U.S.C. 45102 and 45104 (aviation industry testing), 49 U.S.C. 20140 (rail), 49 U.S.C. 31306 (motor carrier), and 49 U.S.C. 5331 (transit). OTETA requires that the Department incorporate the Department of Health and Human Services' (HHS) Mandatory Guidelines, including amendments, into the Department's regulations for testing and laboratory requirements for aviation, rail (except for rail post-accident testing),[1] motor carrier, and transit testing. Additional authority at 5 U.S.C. 7301 note and Executive Order 12564, establish HHS as the agency that establishes scientific and technical guidelines for Federal workplace drug testing programs and standards for certification of laboratories engaged in such drug testing. While DOT has discretion concerning many aspects of its regulations governing testing in the transportation industries' regulated programs, DOT follows the HHS Mandatory Guidelines for the laboratory and specimen testing procedures.

On October 25, 2019, HHS published a final rule establishing the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid (OFMG), which became effective January 1, 2020. (84 FR 57554, Oct. 25, 2019). As of the time of the publication of this final rule, there have been no laboratories yet certified by HHS for oral fluid testing.

II. Background

On November 21, 1988, the Department first published its drug testing program regulation, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs'', part 40 of Title 49 of the Code of Federal Regulations (part 40), as an interim final rule (53 FR 47002). The Department based the scientific requirements in that rule on the 1988 HHS Mandatory Guidelines for Federal Agency Employee Drug Testing Programs (53 FR 11970, Apr. 11, 1988), which set forth the scientific procedures for laboratories to analyze urine specimens for the presence of specified drugs at the HHS-required cutoff levels for the initial and confirmation tests for each specific drug in urine testing. These cutoff levels for urine were established at levels to show use of the specified prohibited drugs.

When the Department adopted its first drug testing final rule, we established a procedure for urine collections generally to take place with visual and aural privacy afforded to each employee, unless suspicious activity under 49 CFR 40.25(f)(14), (16) and (23) called for a direct observed collection (*i.e.,* body-to-bottle observation). (53 FR 47002, Nov. 21, 1988). In December 2000, the Department comprehensively rewrote part 40 into plain language. The direct observation provisions for urine were placed in 49 CFR 40.67, with the body-to-bottle observation requirement remaining unchanged. (65 FR 79462, Dec. 19, 2000).

Urine collections of private citizens are potentially invasive searches and seizures subject to scrutiny under the Fourth Amendment of the United States Constitution. Consequently, the Department has always approached the collection of urine from transportation safety-sensitive employees with a

[1] As will be discussed further below, post-accident toxicological testing conducted under FRA authority is not subject to the OTETA mandate and therefore does not follow Part 40 procedures. See 49 U.S.C. 20140(f), 40.1(c), 219.205(a), and 219.701(a)–(b).

concern for employee privacy, which must be balanced carefully against the Department's need to protect transportation safety. The Department protects individual rights by ensuring privacy for employees undergoing urine testing. Allowing directly observed urine collections only for ''cause'' (*e.g.,* suspicious activity at the collection site, previous violations, or irregularities determined by the laboratory testing of a specimen), but not for all urine collections under part 40, is another protection for employees undergoing testing.

In June 2008, the Department strengthened direct observation collection requirements to include more effective observation procedures and expanded the circumstances that would warrant a direct observation procedure to address cheating on drug tests. (73 FR 35961, Jun. 25, 2008). Although the 2008 final rule was challenged in court and initially stayed, the stay was lifted, and the final rule was reinstated. (74 FR 37949, Jul. 30, 2019). The United States Court of Appeals for the District of Columbia Circuit unanimously affirmed the Department's enhanced direct observation procedures to prevent the use of prosthetic devices used for cheating and to expand direct observation to tests of people who had already violated the rules (*e.g.,* return-to-duty and follow-up tests for persons who had tested positive or refused to test). See *BNSF Railway Company* v. *Department of Transportation,* 566 F.3d 200 (D.C. Cir. 2009).

Before the Department's move to expand the direct observation procedures, HHS was aware of the potential for cheating on urine tests and had begun its own rulemaking to explore alternative testing methods. In 2004, HHS solicited public comment on the following alternative testing methods, all of which would be directly observed: oral fluid, hair, and sweat testing. (69 FR 19673, Apr. 13, 2004). HHS stated: ''Addition of these specimens to the Federal Workplace Drug Testing Program would complement urine drug testing and aid in combating the threat from industries devoted to subverting drug testing through adulteration, substitution, and dilution.'' (*Id.* at 19675). HHS noted that there were problems with all three of the proposed alternative matrices but asked for additional scientific information and sought information on appropriate levels for proficiency testing for these alternatives.

While the science supporting oral fluid testing did not meet the standards of HHS in 2004, science and research studies have now reached the point where HHS has been able to determine that oral fluid testing is an appropriate alternate testing method for identifying illicit drug use in the Federal workplace. The scientific viability of oral fluid testing has greatly advanced since 2004 to the point where HHS determined, in 2019, that the methodology is accurate and appropriate for Federal employee testing.

In its 2019 final rule, HHS stated that ''[t]he scientific basis for the use of oral fluid as an alternative specimen for drug testing has now been broadly established and the advances in the use of oral fluid in detecting drugs have made it possible for this alternative specimen to be used in Federal programs with the same level of confidence that has been applied to the use of urine.'' (84 FR 57554; Oct. 25, 2019). Importantly, HHS stated that its ''OFMG provide the same scientific and forensic supportability of drug test results as the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine. . . .'' *Id.*

In evaluating the progress of science of oral fluid testing and its scientific viability, HHS also looked at its forensic defensibility in workplace testing. Specifically, in its preamble to the OFMG, HHS addressed concerns about passive exposure as the result of someone else's drug use (*e.g.,* from second-hand smoke) in the context of cutoffs or metabolites used in oral fluid testing, particularly with regard to marijuana. (84 FR 57557, 57558; Oct. 25, 2019). HHS concluded that a 4 ng/mL screening test cutoff for THC would detect marijuana use while eliminating possibilities of positive tests resulting from passive exposure, as directed by the SUPPORT for Patients and Communities Act, Public Law 115–271, § 8107(b). (See 84 FR at 57558; Oct. 25, 2019).

We recognize directly observed urine specimen collections have long been the most effective method for preventing individuals from cheating on their drug tests by substituting or adulterating their specimens, but directly observed urine collection may only be done in certain circumstances due to employee privacy concerns (see 49 CFR 40.67). All oral fluid collections are directly observed because they are always collected in front of the collector. Unlike a directly observed urine collection, an oral fluid collection is much less intrusive on the tested employee's privacy. Therefore, adding oral fluid testing as an option is consistent with the careful balancing of an individual's right to privacy with the Department's strong interest in preserving transportation safety by deterring illicit drug use.

OTETA specifically requires the Department to follow the HHS Mandatory Guidelines, which are the scientific and technical guidelines that establish comprehensive standards for all aspects of laboratory-controlled substances testing to ensure full reliability and accuracy in testing. Consequently, the Department published a notice of proposed rulemaking (NPRM) that proposed to revise part 40 to add the oral fluid testing procedures to its existing urine drug testing procedures for safety-sensitive transportation employees subject to drug testing under part 40 (hereinafter referred to as ''employees''). (87 FR 11156; Feb. 28, 2022). In response to public comments requesting an extension of the comment period, we provided additional time through April 29, 2022. (87 FR 16160; Mar. 22, 2022).

Like HHS in its OFMG, we proposed, and are now including in this final rule, the option for employers to use either urine or oral fluid testing (except for FRA post-accident toxicological testing).[2] By providing the option for an employer to choose collecting an oral fluid specimen or a urine specimen, DOT is broadening options for the testing of safety-sensitive employees in the transportation industries.

Importantly, in order for an employer to implement oral fluid testing there must be at least two HHS-certified laboratories for oral fluid testing. There must be one HHS-certified laboratory to conduct the screening and confirmation drug testing on the primary specimen. There must be a different HHS-certified laboratory to conduct the split specimen drug testing on the secondary specimen, if the employee requests split specimen testing for a non-negative result. As of the date of the publication of this final rule, HHS has not yet certified any laboratories to conduct oral fluid testing. The following is a link to HHS-certified laboratories: *https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list* As a reminder, if the employee requests the testing of their split specimen and there is not a second HHS-certified laboratory to test it, then the positive/adulterated/substituted test result would be cancelled per § 40.187(e) because there

[2] Because FRA post-accident toxicological testing requirements in part 219, subpart C are not subject to the OTETA mandate and do not follow Part 40 procedures, this rule does not allow oral fluid testing for FRA post-accident toxicological testing, which still requires urine and blood specimens, as well as body fluid and tissue specimens for post-mortem tests. See §§ 40.1(c), 219.203(a)(1), 219.205(a), and 219.207(a).

would not be a way for the employee to have their split specimen tested and this would undermine the fairness and accuracy of the underlying test. Thus, for the reasons set forth above, oral fluid testing under part 40 cannot be fully implemented until HHS certifies at least two laboratories.

The Department has amended some provisions of part 40 to harmonize with pertinent sections of the urine and oral fluid HHS Mandatory Guidelines. We have clarified certain existing part 40 provisions that cover the handling of urine specimens, removed provisions that are no longer necessary (such as erroneous compliance dates), added clarifying language to other provisions (such as updated definitions and web links where necessary), and modified a few substantive provisions to address issues that have arisen in practice (such as whether a test cancelled by a medical review officer (MRO) can ever be uncancelled, and whether a Substance Abuse Professional (SAP) can conduct evaluations virtually and across State lines). We have also modified some proposed revisions and added some new provisions to part 40, in response to public comments. This final rule also makes changes to the regulations of some DOT agencies, to ensure harmonization within the Department with the part 40 regulation.

There were 417 commenters, most of whom provided multiple substantive and valuable points within each comment. The Department appreciates the time and effort the commenters expended in providing literally thousands of meaningful points. As we explained in our final rule in December of 2000, what matters the most is not a count of how many commenters favored or opposed a particular proposal. Instead, the Department's ''central concern is with the substance of the comments. In discussing comments on this rule and our response to them, we will focus on the substance of positions that commenters expressed, and on why we did or did not make changes in response to various comments.'' (65 FR 79462, Dec. 19, 2000). Similarly, in this preamble, with thousands of substantive comments, we have not ''counted the number of comments supporting a given position except in the most general way, believing that doing so would distract from the discussion of substantive issues.'' *Id.* However, we have attempted to meaningfully address all comments, including the questions and concerns expressed therein.

As the final part of this Background section, we are providing readers with a Redesignation Table to provide what sections in the existing part 40 are changing and what their new redesignations are.

Redesignation Table

Beginning with subpart D (see below), the Department is redesignating (*i.e.,* renumbering and reordering) numerous sections of part 40 to provide a more easily followed flow for users of the regulation provisions specific to oral fluid drug testing.

REDESIGNATIONS OF SECTIONS IN PART 40

Old section	New section
40.35	40.36.
40.41	40.42.
40.45	40.40.
40.47	40.41.
40.49	40.44.
40.51	40.45.
40.73	40.79.
40.85	40.82.
40.87	40.85.
40.89	40.86.
40.91	40.87.
40.93	40.88.
40.95	40.89.
40.96	40.90.
40.99	40.84.
Appendix B	Appendix D.
Appendix C	Appendix E.
Appendix D	Appendix F.
Appendix E	Appendix G.
Appendix F	Appendix H.
Appendix G	Appendix I.
Appendix H	Appendix J.

III. Principal Policy Considerations

Oral Fluid as an Alternate Drug Testing Method for Workplace Testing

When the HHS finalized its OFMG in 2019, it opened oral fluid testing to Federal agencies as an alternate methodology to choose and not as a replacement for urine drug testing. Similarly, the Department has determined that oral fluid testing will be an option for regulated employers and not a replacement for urine testing.

The commenters expressed many different opinions on whether oral fluid testing should be mandated in some or all circumstances; whether it should be purely the employer's choice; whether it should be the employee's choice; and whether it should be the collector's choice. There were suggestions to allow only oral fluid testing for reasonable suspicion and post-accident testing. Some commenters wanted to see oral fluid testing prohibited for pre-employment and random testing because they preferred the potentially longer windows of detection of urine versus oral fluid testing. Individuals who were concerned with paruresis wanted the employee to be able to choose oral fluid for every test and some of those commenters wanted urine testing banned. Some commenters were concerned that, if we mandated oral fluid testing in any circumstances, then every collector would need to be trained in oral fluid collections and every collection site would need to purchase oral fluid testing kits at an additional expense to such small businesses. The commenters who opposed oral fluid testing generally said they were concerned that oral fluid specimens would be used for DNA testing, or the commenters wanted drug testing of safety sensitive employees to stop.

As discussed earlier, HHS has determined oral fluid drug testing, like urine drug testing, is accurate and defensible. With both drug testing methodologies being scientifically accurate and forensically defensible, there is no reason to eliminate either methodology. Similarly, we see no reason to mandate either methodology. However, we will discuss below, in reference to problem collection scenarios covered by § 40.67 (direct observation collections) and § 40.193 (insufficient specimen ''shy bladder'' cases), that we strongly suggest employers consider moving to an oral fluid testing methodology. Employers should communicate to their consortium/third party administrator (C/TPA) and to their collection sites whether they want to utilize urine testing, oral fluid testing, or some combination of both. Employers should also provide their service agents with the specific instances that would trigger a different methodology (*e.g.,* an insufficient oral fluid collection should immediately become a urine collection or vice-versa).

If we were to mandate an alternate methodology be used, but the collection kit was not available at the collection site, the test would likely not occur at that site. If no test occurs, that would not be in the best interest of safety.

Those who commented that not every collection site will offer oral fluid testing have a valid point. It is possible a collection site will make a business decision not to offer oral fluid testing because of costs or training issues. Although it is the ultimate duty of the employer to ensure their collection sites are able and available to perform testing in accordance with part 40, it would be helpful for collections sites to notify their DOT-regulated clients that they will not offer oral fluid collections.

It is also important to remember that under § 40.209(b)(3), if an unqualified collector were to conduct a collection, it would not cancel the test. As we said in our 2000 preamble to § 40.209, ''a test is

not invalidated because a collector has not fulfilled a training requirement. For example, suppose someone collects a specimen correctly but has not completed required training or retraining. The test would not be cancelled because the training requirement was not met.'' 65 FR 79472. To reflect this point, we have updated § 40.209(b)(3) to add a reference to § 40.35 for oral fluid collector training, in addition to the existing reference to § 40.33 for urine collector training. Although it would not cancel the test result if the collector has not been trained in accordance with part 40, the collector, other service agents, and employer involved might be found in noncompliance as the result of the failure to meet training requirements.

Since the inception of DOT-regulated alcohol testing in 1994, we have allowed screening testing to be conducted using saliva testing devices, and we have required all confirmation testing to be conducted on an evidential breath testing (EBT) device. See 49 CFR 40.231. A facility that conducts alcohol saliva screening but that does not have an EBT must work expeditiously with the employer to ensure that the confirmation test takes place on an EBT.

Similarly, if a collection site only offers urine collections and an insufficient specimen is presented or if a direct observation collection is triggered, that collection site is expected to work expeditiously with the employer to ensure that the oral fluid collection occurs if the employer wants an oral fluid collection performed for an employee. Collection sites need to make business decisions about whether they will offer urine collections, oral fluid collections or both. Thus, not every collector needs to be trained on both urine and oral fluid collections unless they offer both.

The Owner-Operator Independent Drivers Association (OOIDA) asked that we ''continue educating industry stakeholders about the scientific and forensic supportability of oral fluid testing . . . (and) about how oral fluid testing would be implemented and administered.'' OOIDA reminded us that State and local law enforcement execute roadside testing, and OOIDA wanted us to differentiate and address concerns in the trucking industry about the differences between roadside oral fluid drug tests and DOT's regulated laboratory tests.

The Department will continue educating industry stakeholders, as we have always done, for urine testing and for part 40 compliance. Traditionally, State and local law enforcement have implemented their own testing entirely outside DOT-regulated drug testing and will continue to do so. Often, law enforcement entities have chosen point-of-collection testing (POCT) devices that provide initial screening test results, instead of laboratory-based screening testing. The POCT testing can cover the same drugs for which we test and more (or fewer) substances. The cutoff levels of the drugs being tested for in POCT devices differ widely among POCT devices. Thus, the differences are varying and may be significant. We will educate our regulated industries about DOT's regulated oral fluid testing alone. However, we welcome our industry partners to continue to educate their memberships about the differences they are encountering beyond DOT-regulated testing.

In buffered collections, the employee's oral fluid is collected on a device and then the device is subdivided into Bottles A and B, which contain a buffering solution. The buffering solution draws the oral fluid from the device, so that the liquid can be analyzed by the laboratory for the drugs for which we test. OOIDA raised concerns about whether drugs sufficiently enter the buffering solution. In its oversight of laboratory testing under the OFMG, HHS sets the standards for the devices and recovery of drug from the same. These are assessed two times: first, by the manufacturer and second, during laboratory validation of the collection device. While HHS does not certify or validate the collection devices or the buffer, the NLCP laboratory inspection process does ensure accuracy of the results obtained by the laboratories as evidenced by each laboratory's method of validation documentation which must specify the collection device(s) used. HHS will approve each specific HHS-certified oral fluid laboratory to use only one or more specific devices for which the laboratory can ensure the accuracy of the results. For further discussion of this subject, see the HHS final rule on oral fluid testing at 84 FR 57559, 57584 (Oct. 25, 2019).

Also, OOIDA stated they do not want hair testing in the DOT regulated program. It is important to note hair testing is outside the scope of this rulemaking, as we will discuss further in this preamble.

Finally, in response to the commenters who opposed the proposal to allow oral fluid testing due to concerns about DNA information or who oppose the principle of drug testing of safety-sensitive employees, we disagree on both points. As for DNA testing, part 40 already prohibits the DNA testing of any specimen collected for a DOT-regulated test. In fact, this rulemaking proposed to update the prohibitions on DNA testing contained in §§ 40.13(c) and (e) (now §§ 40.13(c) and (f)) to ensure that they extend to oral fluid testing.

As for the commenters who generally opposed drug testing, they offered no data to support why eliminating drug testing would be in the best interest of transportation safety. Instead, they merely said that transportation safety-sensitive employees should be permitted to use marijuana. However, it is important to remember that the beginning of DOT-regulated testing in 1988 was prompted by marijuana-related accidents that occurred in 1985 (two New York City subway accidents) and 1987 (one railroad accident in Chase, Maryland).

Whether Using Oral Fluid Testing as an Alternate Method Can Reduce Costs

In the proposal for this rulemaking, we stated that oral fluid testing is generally less expensive than urine testing. We said an oral fluid test can cost between $10 to $20 less than a urine test (*e.g.,* about $50 for a typical urine testing process, vs. about $35 for an oral fluid testing process, with the largest part of the difference being attributable to the collection process). We asked for public comment on the costs of oral fluid testing as compared to urine testing to affirm or adjust this cost assumption.

The majority of commenters on this point said the cost of an oral fluid test would be more expensive than a urine test, but that there were other, mostly unquantifiable benefits that oral fluid testing would bring. Specifically, those benefits included: eliminating the costs of shy bladder evaluations; alleviating the burden on individuals who cannot produce a sufficient urine specimen due to a psychological and/or physical medical condition; opening transportation safety-sensitive employment possibilities to many who have disabilities rendering them unable to produce an adequate urine specimen; and the thwarting of cheating. Many commenters said these benefits would outweigh the additional costs of conducting an oral fluid specimen collection.

Several commenters who conduct non-DOT collections said laboratories currently conducting oral fluid testing charge about $4.00 per buffered collection device, versus urine collection devices that are provided at no charge. A number of commenters in the laboratory and manufacturing businesses explained the need to charge because the buffering solutions included

in the oral fluid collection tubes are an added expense. Urine specimen collection devices are empty plastic containers, with no solutions involved, and are thus less expensive to provide and need no Food and Drug Administration (FDA) approval. In addition, the oral fluid collection kits expire, often as soon as twelve months after manufacturing because of the limited shelf life of the buffering solution and sometimes the collection pads themselves, which are included in the collection kits. Collection sites noted that they not only pay the $4.00 per oral fluid collection kit, but then they must discard each kit that expires before it is used. Of course, urine collection kits do not expire.

We proposed the use of a single oral fluid collection device that would be subdivided in the presence of the donor, as required by OTETA. Some commenters expressed appreciation that DOT would use a single device versus two separate devices. Those commenters noted that even if the single device were to be subdivided, it might cost more than $4.00, but was not likely to be the same expense as two separate kits at $4.00 each, which could have different expiration dates. Some commenters suggested the new devices would cost no more than $4.00 each, giving the new devices appeal in the non-DOT oral fluid market, also. They said the oral fluid device manufacturers and the laboratories would want to keep up with the DOT's requirements for DOT-regulated testing and they would not want to price themselves out of the market for non-DOT testing, since many in the non-DOT market would follow DOT's requirements, as they now do.

We had a tremendous number of comments from individuals who have an inability to provide a sufficient quantity of urine due to a psychological condition known as paruresis. Individuals in this group told stories of losing their careers due to an inability to provide a sufficient quantity of urine. Others said they chose not to pursue transportation safety-sensitive careers because of the requirements of urine testing. Some commenters told of aspirations of becoming commercial truck drivers or airline pilots, once the perceived barrier of urine testing is removed. With the option of oral fluid testing methodology, these individuals emphasized their marketability in the transportation workplace would increase.

While part 40 has a process for a medical evaluation to be conducted to determine if one's inability to provide urine is legitimate under § 40.193, the commenters noted the process was arduous for them and expensive. In addition, such individuals often do not have a diagnosis of a pre-existing psychological condition that would substantiate their inability to provide a sufficient quantity of urine. We received comments from the International Paruresis Association (IPA), who thoroughly explained the condition of paruresis. The IPA and the individual commenters applauded DOT for proposing to allow oral fluid testing. Many asked for the Department to end urine testing or to allow employees to choose the methodology that would be used for their testing. By allowing the employee to choose the methodology, they believed those with paruresis could receive a reasonable accommodation without needing to disclose their disability to their respective employer or prospective employer.

We asked for public comment about the number of shy bladder evaluations that are occurring and how much they cost. We did not receive any public comment to add clarity to those points.

Overall, the commenters did not provide specific data on the numbers we sought clarification on through the public notice and comment process, but they did provide many comments about the qualitative improvements to DOT drug testing that would be added through the adoption of oral fluid testing. Consequently, we adjusted our approach to the economic analysis for this rule. Instead of the quantitative economic analysis we began in the NPRM, we have conducted a qualitative analysis for this final rule.

As discussed above under *Oral Fluid as an Alternate Methodology* section, we have decided to make oral fluid testing available to employers as an alternate methodology to urine testing. We are not eliminating urine testing. We are including oral fluid testing as an option available to employers. Whether an oral fluid or urine test is administered is the employer's choice and not the choice of the employee, for the reasons explained in this preamble.

Who will perform the oral fluid collection?

Recognizing that employers often utilize the services of external qualified collectors for urine testing, we asked for comment as to whether this would continue for oral fluid testing, or if employers would train their own company personnel to become qualified collectors for oral fluid testing purposes. We also specifically asked if companies thought they would train internal personnel instead of contracting with external providers, whether this would this be due to costs, convenience or other reasons, and what would be the cost implications of the two approaches.

The majority of commenters disagreed with the concept of employers conducting their own collections. The commenters cited concerns such as invasion of privacy by supervisors and a lack of professionalism if an employer's own staff conducted oral fluid collections. Other commenters said allowing a co-worker to conduct oral fluid collections would lead to fraud because an employee with a substance use disorder might influence the objectivity of a colleague who is collecting. Some employers said that they would not want to incur the training costs or liability for their corporate employees to conduct collections. Some commenters wondered if internal collectors would thwart the testing process so that their fellow employees would not test positive. A few external collectors worried that in-house collections would lead to less demand for external collectors, thereby driving up costs for those who still want to use external collectors. One collection company polled its clients and found that 90 percent of their clients would continue to use external collectors.

Even those who favored internal collections agreed that there should be limitations on internal collectors within an employer's organization. They supported the proposal to make it clear that employees, relatives, and close friends of the employees cannot conduct collections, consistent with existing guidance in the Department's Urine Specimen Collection Guidelines, which can be found at: *https://www.transportation.gov/odapc/urine-specimen-collection-guidelines.*

Interestingly, many of those commenters appeared not to realize that employers have been allowed to collect urine specimens in-house for more than 30 years. For example, some of the large employers in the transportation industries have on-site clinics and regularly conduct many urine collections, including those requiring direct observation collections. Thus, we were asking more about whether oral fluid collections would occur externally or in-house, and were separately proposing the existing constraints regarding employees, relatives, and close friends of the employees as we have in urine testing.

We have amended § 40.31 to separately specify the requirements for collectors of urine and oral fluid specimens, respectively. We have adopted wording to require oral fluid collectors to be qualified. The final rule clarifies that employees, relatives, and

close friends of the employees cannot conduct collections, consistent with existing guidance in the Department's Urine Specimen Collection Guidelines.

Allowing Alternate Specimens Provides Flexibility to Employers

The Department proposed to offer employers flexibility in the type of specimen they collect. This final rule provides flexibility to employers in most situations, although we strongly encourage employers to consider having an alternate methodology ready and available to plan for contingencies (*e.g.,* an employee's inability to produce a sufficient specimen as a permanent, long-term, or short-term condition; direct observation urine collections that could be handled easily by switching to oral fluid testing; reasonable accommodation requests; etc.).

In addition, when an employer offers both oral fluid and urine testing, this can afford flexibility and other benefits. For example, when an employer determines that a DOT post-accident or a reasonable cause/suspicion test is needed, an oral fluid collection could be done at the scene of the accident or the workplace without the need to provide access to a bathroom. Oral fluid testing allows the collection to be done by any oral fluid collector qualified under part 40—either an external contractor or an employee the DOT-regulated employer dispatches to the scene of the accident or incident. In addition, offering both urine and oral fluid testing would permit an employer and its service agent to efficiently deal with situations when an employee cannot provide a sufficient specimen. Finally, having the flexibility of both options allows an employer and its service agent the ability to perform a directly observed collection as an oral fluid test, without concerns about the gender of the observer.

Understanding Windows of Detection

As discussed earlier, like urine testing, oral fluid testing is scientifically accurate and forensically defensible. As our scientific authority for drug testing under OTETA, HHS has determined that oral fluid testing, set at the cutoffs established by HHS, meets the requirements for accurate Federal drug testing.

Urine and oral fluid specimen testing each offer different benefits and limitations in assisting employers in detecting and deterring illegal drug use, and no single specimen type is perfect for every situation. In an effort to assist employers in understanding some benefits and limitations to each methodology, we reviewed and referenced various scientific sources in compiling a table of the windows of detection. This table provided information regarding the specific timeframe in which an oral fluid or a urine drug test could identify the presence of the drugs for which we test. We asked for public comment on the accuracy and completeness of the information in the windows of detection table we provided.

We received a few public comments on the actual information in the table. A couple of commenters believed that the windows of detection we had listed for oral fluid testing were too long. Several commenters suggested that we remove the table from the final rule, saying that it caused confusion. Another commenter cautioned that windows of detection should be interpreted carefully because the results depend on study design and context. They noted that the window of detection ''for a single dose may differ from those observed in individuals who are regular users. In addition, route of administration has significant impact on concentrations and detection of drugs in oral fluid over time.'' That commenter, a laboratory, also noted, ''in general, detection windows in oral fluid are shorter than those in urine, but it should not be inferred that the cutoffs are equivalent''. Another laboratory cautioned against including a windows of detection table in the final rule because ''the **Federal Register** is not updated each time a new scientific reference becomes available that may or may not support the duration and literature referenced was very limited and not very recently published.'' Quest Diagnostics discussed the complexity in understanding windows of detection due to ''numerous variables in play including: drug dose, drug purity, route of administration, time since dosing, individual metabolic rate variability and hydration state (for urine).'' As the study of oral fluid continues, Quest Diagnostics noted ''more data will be forthcoming as oral fluid testing is instituted across the United States that will provide more detailed information about oral fluid detection windows which will make these stated detection windows obsolete and likely misleading.''

Many commenters relied on the shorter windows of detection for oral fluid testing listed in the table from the preamble to the NPRM to reach the assumption that oral fluid test results are more akin to impairment tests. That is not a correct assumption. While oral fluid testing may provide a better indicator of an employee's recent use of the drug, it also detects frequent users. Furthermore, there is no definitive drug impairment test. Importantly, the DOT testing program is a deterrence-based program to prevent illegal drug use, not an impairment testing program.

We agree with the commenters who cautioned against including a windows of detection table in the final rule. Any information that is accurate today in a table of windows of detection may not be accurate shortly thereafter, as oral fluid testing is deployed by DOT-regulated employers and related research on the windows of detection continues. For the reasons stated above, we have removed the windows of detection table and we note that oral fluid windows of detection will likely be shorter than for urine. Employers, working in conjunction with their service agents, should determine whether urine or oral fluid collection is best for their program and in what contexts.

Substance Abuse Professional Issues

For more than twenty years, part 40 has been clear that all evaluations with a Substance Abuse Professional (SAP) must be face-to-face and in-person. During the COVID–19 public health emergency, we realized conducting face-to-face in-person evaluations may not be possible or advisable for certain individuals. As a result, the Department issued a notice of enforcement discretion on April 4, 2020, to allow SAPs to conduct, for a specified period of time, what we called ''face-to-face remote evaluations''. We extended that notice several times from 2020–2022, and on December 20, 2022, we extended the notice to remain in effect until the effective date of this final rule. (*https://www.transportation.gov/odapc/Statement_of_Enforcement_Discretion_SAPs*)

To make a remote evaluation as effective as possible, within the notice of enforcement discretion we provided, we said the technology the SAP uses should permit a real-time two-way audio and visual communication and interaction between the SAP and the employee. We said the SAP should determine if the quality of the technology (*e.g.,* speed of the internet connection, clarity of the display, application being used, etc.) is sufficient for the SAP to gather all the visual (*e.g.,* non-verbal physical cues) and audible information you would normally observe in an in-person face-to-face interaction. In other words, the SAP must be able to objectively evaluate verbal, non-verbal and physical characteristics to a sufficient extent through the chosen technology. We added that SAPs should document the format of the assessment in the final

SAP report. We also stated we would not consider a remote evaluation to be an act of serious noncompliance meriting resort to the Public Interest Exclusion (PIE) process.

We proposed amendments to several sections of subpart O of part 40 to make the notice of enforcement discretion permanent. We proposed and are adopting modifications to § 40.291(a)(1) to allow the SAP to conduct the evaluations either in-person or remotely, with criteria based on those from the COVID–19 notice as conditions for remote evaluations. First, the revisions require the technology used to permit real-time two-way audio and visual interaction between the SAP and the employee (*i.e.,* a conversation without video would not meet this criterion). Second, the quality of the technology (*e.g.,* speed of the internet connection, clarity of the display) must be sufficient to allow the SAP to gather all the visual and audible information the SAP would normally observe in a face-to-face in-person interaction. In addition, the technology must incorporate sufficiently robust security to protect the confidentiality of the conversation. Third, a SAP can only use the technology in question if the SAP's State-issued license authorizes the SAP to do so (*e.g.,* a State license may permit a practitioner to work only with clients in the State of licensure).

On a second but related topic, we asked for public comment about whether a SAP's respective ''qualifying credential'' (*i.e.,* State license or other credential under § 40.281) would allow them to evaluate individuals who live in a different State from where the SAP is licensed. We asked if this was already allowed, especially since virtual video evaluations are often done outside of the DOT-regulated context. We also asked for public comment about what steps a SAP, who is remotely evaluating an individual outside of the SAP's locality, could take to ensure a working knowledge of quality programs and qualified counselors available to the employee when recommending a course of treatment and/or education.

The comments we received on SAP remote evaluations and crossing ''State lines'' were thought-provoking and abundant. There were many supporting, opposing, qualifying and suggesting improvements to the proposals. We will discuss them in-depth.

Regarding remote SAP evaluations, the majority of commenters enthusiastically supported the proposal. Many commenters who identified themselves as qualified SAPs who have practiced for years said remote evaluations offered unforeseen benefits. Several said they had learned to use technology to better study the employee's mannerisms, facial expressions, and nonverbal cues as effectively as they could for their in-person consultations. One SAP admitted to not being receptive to remote evaluations before the COVID–19 public health emergency, but acknowledged that ''everything has changed, including people's receptivity to virtual interactions . . . even extensive treatment is often virtual.'' That same SAP acknowledged reading comments from other SAPs who do not support virtual evaluations, but strongly disagreed with those fellow commenters because of the advances in telehealth and the skills SAPs are developing for evaluating clients virtually as effectively as in-person. Specifically, this SAP and many others recognized that they had built skill in assessing eye movement, involuntary body twitches, and other aspects of nonverbal indicators that are key to accurate and complete evaluations. One SAP pointed out there would be no difference between a virtual and an in-person evaluation if the technology is ''sufficient to allow the SAP to gather all visual and audible information that would be apparent in a face-to-face interaction.'' One commenter wanted DOT to gather more information on the effectiveness of remote evaluations, believing the SAP will miss too many details if the evaluation is not conducted in-person. However, with the advances in telehealth and the robust comments by the many SAPs who took the time to comment, we believe that we have reliable information from practicing SAPs who are confident that face-to-face remote evaluations are as effective as in-person face-to-face evaluations.

In addition, several practicing SAPs said they learn more about the employee and circumstances in virtual assessments in the home of the employee, because the SAP can ''speak to family members and obtain other collateral information that is not always readily available in the office setting.'' Some said that the employees seem to be more relaxed and communicative when they can participate from the comfort of their home. Several SAPs believed it is less stressful for employees in remote areas to be able to see a SAP without having to travel to the SAP's office. Many SAPs expressed gratitude about the reduction in cost to the employees, who often needed to travel significant distances to see the SAP in-person. Several SAPs said that this innovation that arose temporarily during 2020–2022 should be finalized because it created access to evaluation for many employees who were at a loss for where to go to seek help, especially for those who live in remote rural areas.

Some SAPs mentioned multiple ''safety'' factors as a reason to allow remote evaluations. One said, ''If someone has been removed from safety-sensitive duties . . . meeting remotely keeps them off the road further lessening the potential for harm to the public.'' Another SAP pointed out that, after an employee was ''drinking and driving, does it really make sense to say 'hey I know you were under the influence while driving, but can you get in your car and come see me?' '' Some of the SAPs said that there are occasional personal safety issues with employees who are angry because of their non-negative results or refusals. One commenter who has been involved with SAP evaluations and training for more than 30 years said, ''virtual assessments have increased personal safety for SAPs dealing with belligerent employees.'' Multiple SAP commenters noted the personal safety issues are significantly lessened when the contact between the employee and the SAP can be conducted virtually.

A number of SAPs noted a reduction in cost for themselves. Although there was an initial cost of setting up the details for conducting remote evaluations generally (*e.g.,* subscribing to HIPAA-compliant software platforms, obtaining the right equipment for audio and visual interactions), the costs of not needing to conduct evaluations in a formal office setting was a significant cost savings. One SAP asked if we could allow post office boxes for the SAP's address because many SAPs no longer maintain a professional office space outside their home.

Regarding the use of a post office box instead of a physical address, we will not consider that change at this time. While many SAPs conduct a significant number of evaluations virtually, we are still maintaining the option for in-person evaluations. In some situations, in-person evaluations may be the best choice and we want to ensure that SAPs consider that. Also, having a physical location where DOT can inspect, audit, or investigate a SAP and their records is important, and we require this of service agents in part 40. If the SAP chooses to run their operations from their home, they must furnish the address from that place of business on their letterhead. If using one's home address is not acceptable to an individual SAP, they must continue to provide a physical commercial location address for part 40 purposes.

In not allowing SAPs to use post office boxes, we are being consistent with our Question and Answer from September of 2001, which reads, in pertinent part, as follows: ''May the MRO's address entered on the CCF be a post-office box number only? . . . No. The address must contain at least a number and street address. . . . The post-office box can be included, but not in lieu of the number and street address.'' *https://www.transportation.gov/odapc/part40QA/40-311* We are also adding this reminder to § 40.40(c)(2), to note MRO addresses must not be simply a post office box.

The SAP commenters who favored allowing remote evaluations agreed the technology must provide real-time audio and visual interaction between the SAP and the employee. We agree that an audio call, alone, will not satisfy the requirements of part 40 or the expectations of these professionals.

Technology security concerns were on the mind of some commenters, also. Many SAPs suggested that we require a HIPAA-compliant software or platform for these audio-visual interactions. Commenters also recommended using high-level platforms to ensure confidentiality, and not merely commercial platforms that are available for video calls.

It is important to note that HIPAA does not apply to the DOT testing, which involves searches and seizures under the Fourth Amendment of the United States Constitution. However, we recognize SAPs may be required by the State that licenses the SAP to follow HIPAA as part of their clinical evaluations. While we will not require specific software and we will not reference HIPAA compliance as a criteria, we have specified in § 40.291(a)(1)(ii) of the final rule the performance standard that the technology must provide ''security to protect the confidentiality of the communication.'' We also added language to § 40.291 to explain that the technology needs to be at the expected level of confidentiality and security as is required for substance abuse evaluations. It is important to note that this is a performance standard. We did not prescribe exact measures, which may currently be appropriate, because those standards will change, and we want to ensure the most effective standards continue to be applied.

Often, the individual State's licensing and/or private credentialing authority set ethical and confidentiality criteria for licensed professionals who are performing their duties via virtual platforms. Some of the SAP commenters have noted that there are additional ethical guidelines and standards that they follow in order to provide remote evaluation services. Sometimes these additional requirements are set by the qualifying credential authorities, other times these are guidelines the SAPs follow because they are recommended by the professional organizations with which they affiliate. We urge SAPs to continue to follow their respective codes of ethics and confidentiality. The ethics of using video technology is an evolving field, and we expect SAPs to keep up with their ethical requirements as this aspect of their profession continues to improve and evolve.

One SAP suggested that we make telehealth education part of SAP training. We will not require that because not all SAPs will offer remote evaluations. Also, SAP training should continue to focus upon part 40 requirements and not about generally how to practice more effectively.

SAPs who opposed the proposal varied in wanting to see remote evaluations prohibited versus allowed in special circumstances. Some commenters only wanted to see remote evaluations when there is a pandemic, while others would support remote evaluations in a national crisis or in situations where the employee was located hundreds of miles from the nearest SAP. Other SAPs disliked remote evaluations because ''paperwork and payment'' are better collected in person. Some SAP commenters were concerned about employees ''shopping for less expensive SAPs'' outside their own high-cost zip code. Conversely, one commenter who favored the remote evaluation option said that this reduction in cost for the out-of-work employee was exactly why the Department should allow an employee to seek a SAP outside their home area. Also, SAPs who opposed remote evaluations said it would be difficult to find qualified and appropriate treatment resources outside the SAP's local area, while other SAPs said this would not be a problem because of the ability to search for treatment resources on the internet. Those SAPs who suggested using the internet also said the SAP would then call the treatment facility to establish communication and determine if the treatment resource was appropriate for the employee's needs.

One employer's association provided a reply to other commenters who wanted the SAP to justify why a remote evaluation is being held instead of an in-person evaluation. The employer's association recommended allowing the SAP to choose remote or in-person without the need to justify one over the other ''because 'DOT cannot predict and codify the wide range of circumstances that could reasonably justify remote SAP evaluation, nor could employers effectively determine whether a particular circumstance is appropriate if the DOT applies an ambiguous standard, like 'extraordinary circumstances'.'' Reply comments such as this are very helpful to us as regulators, and we thank this commenter and others who took the time to read and respond to the comments of others.

Commenters who favored and those who opposed the proposal were almost unanimous in wanting in-person evaluations to continue as an option. That option should be decided by the SAP, many of the commenters said.

We had proposed and agree with allowing SAPs the option of choosing to conduct face-to-face evaluations remotely in lieu of in-person meetings, and never proposed for the in-person evaluations to be eliminated. We have decided to adopt the proposed provision with minor modifications. We agree with the commenters and will permit both evaluations in-person or via virtual technology meeting the requirements of part 40. The choice of which option to use will be the decision of the SAP, without any need to justify the use of one or the other.

With SAPs being permitted to conduct remote evaluations, we anticipated the issue of SAPs providing evaluations across State lines would be something we needed to address. On this subject, we received a few favorable comments, but most commenters disagreed with the Department taking action in this area.

Some commenters had no objections to a SAP providing part 40 services outside the State in which the SAP is licensed. One of these commenters noted the MROs are licensed in one State but are permitted to provide MRO services under part 40 in all 50 States, the U.S. Territories, Canada and Mexico. Other commenters said they had no objections to allowing SAPs to practice across State lines, as long as part 40 clarified that the SAP could specifically do so as a qualified SAP under part 40. Some told us their certifications as ''national'' or ''international'' drug and alcohol counselors, which they received through larger organizations that administer the SAP examinations, already allow them to practice throughout the United States. Also, several commenters, who are practicing SAPs, told us their licensing States already allowed them to practice across State lines. Consequently, within the parameters of their own State's licensure, they have been conducting

SAP evaluations of DOT-regulated employees for approximately two years. Another SAP told us the licensure from their State ''does not permit me to conduct assessments across state lines, however, I have an additional certification for telemental health (BC–TMH). Together, my credentials permit me to practice both counseling and my SAP assessments remotely.'' One commenter asserted that ''SAP is a federal qualification and I believe we should be permitted by federal designation to see a DOT-governed employee from anywhere.'' Another commenter stated, ''As a federal program, drug testing requirements for transportation workers already span jurisdictions; it follows that an SAP should likewise be able to conduct evaluations across jurisdictions . . .'' An MRO association characterized the SAP as ''not a treatment provider, just as the MRO is not a treatment provider for donors. . . . Thus, performing a substance abuse assessment and recommending treatment and a plan, the SAP would unlikely be in violation of any state practice act.''

The commenters who opposed allowing practice across State lines said there was value in State licensing and overseeing counselors who provide services to individuals within the State. Others who disfavored the proposal raised the argument addressed above about a distant SAP not knowing the treatment facilities that offer the appropriate treatment for an individual employee.

The commenters have made it clear that there is much confusion about whether a SAP can practice across State lines. It is also clear that this is an evolving topic, having nothing to do with part 40. The States, individually, are addressing needs that have arisen during the past two years and the resulting evolution of telehealth options. The SAP certification organizations (*see* § 40.283) should make their own determinations about whether those individuals who hold their respective qualifying credential can practice throughout the United States. SAPs should continue to keep informed about the permissions and jurisdictional limitations of their qualifying credentials. If a State licensing authority or DOT-recognized credentialing organization decides that it is appropriate for one or more of their authorized practitioner categories that qualifies a person to be a SAP to practice across State lines, DOT will defer to that granting authority.

With that said, in the short-term, the current inconsistency as to where a SAP can practice remotely is creating problems for some DOT-regulated employees who are seeking SAP services. With an in-person SAP evaluation, the employee sits in the SAP's own office, and there is no question that the SAP is licensed to practice in their own office. Unique to a remote SAP evaluation, an employee may not be located in the same geographic jurisdiction where the SAP is authorized to practice, thereby making the SAP's underlying qualifying credential not valid for that particular evaluation. Under the DOT COVID–19 notice allowing remote evaluations, we stated: ''You may only utilize the technology if your State-issued license authorizes you to do so and within the parameters of that authority.'' Consequently, any SAP who evaluates an employee outside the parameters of the SAP's State-issued license or other credential is acting without authority and violating part 40. To address this, we have added a new § 40.281(f) to create a limitation on an otherwise qualified SAP under this part who conducts evaluations outside the geographic limitations applicable to their credential.

Some otherwise qualified SAPs have acted outside their authority and created problems for employees who received evaluations under the DOT COVID–19 notice. When we have learned that a qualified SAP evaluated an employee outside the SAP's authorized geographic jurisdiction, we have asked the employee to seek the services of a different SAP who is qualified and can conduct the evaluation as permitted by their credential. There has been no other option under part 40 until this final rule.

However, we acknowledge the costs of having an out-of-work employee seek and pay for a second SAP evaluation is an unfair and unintended consequence of allowing remote evaluations. Therefore, we are adding a new § 40.297(c) to notify the otherwise qualified SAP (*see* § 40.281(a) through (d)) that they must not perform evaluations outside the geographic jurisdiction of their credential(s). If the SAP who made the evaluation exceeds their geographic jurisdiction, the employee will not be required to seek the evaluation of a second SAP. The evaluation and assessment of the SAP is still valid for the employee, even if the SAP has failed to follow § 40.297(c) by exceeding their geographic jurisdiction. The employer must carry out the follow-up testing plan of the SAP, even though the SAP was acting outside their geographic jurisdiction. We have added a new § 40.303(d) to let employers know they can utilize such evaluations and follow-up plans, if they choose to return the employee to work. We believe that these new sections, along with new § 40.281(f), address the unintended consequences of costs and stress to employees.

The new §§ 40.281(f) and 40.297(c) also require that a qualified SAP must not evaluate any employee outside the jurisdiction in which the SAP can practice. In other words, the intention is to prohibit the SAP from crossing geographic lines without authority and to relieve the employee from the need to pay the cost of seeking a new SAP evaluation. If the SAP engages in evaluations outside the limits of their credential, then this activity could constitute serious noncompliance and the SAP could be subject to a PIE.

Finally, as a compliance reminder: Every SAP is expected to be aware of the specific requirements of their State or credentialing authority and may not be authorized to practice across State lines. Some of the SAPs who commented that they have national and international credentials through certain organizations may not be correct and should check with those organizations who, previously, have told us their credentials are not nationwide. It will benefit both the SAP and every DOT-regulated employee they evaluate to know what their geographic jurisdiction is.

Using Identification Numbers Other Than a Social Security Number or Employee Identification Number

Since the inception of the DOT's drug testing program, the Federal Drug Testing Custody and Control Form (CCF) has included a space for the Social Security Number or Employee Identification Number (SSN or Employee ID No.). We proposed to add a new definition for ''SSN or Employee ID No.'', and some minor changes to rule language that mentioned ''SSN'' in §§ 40.14, 40.45, 40.97, 40.163, and 40.311. The rationale for the change includes privacy concerns and identity theft considerations that arose over the years since the 1988 inception of part 40. Also prompting these amendments was a final rule in 2016, in which the Federal Motor Carrier Safety Administration (FMCSA) changed the information Commercial Driver's License (CDL) holders and Commercial Learner's Permit (CLP) holders must provide on the CCF and Alcohol Testing Form (ATF). Specifically, in 2016, FMCSA amended 49 CFR 382.123(a) and (b) to require FMCSA-regulated drivers undergoing DOT-regulated testing and their employers to use the CDL number and State of issuance,

instead of the SSN or other employee ID number, on the CCF and ATF for all drug and alcohol tests conducted under 49 CFR part 382 (part 382). See FMCSA's Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) final rule (81 FR 87686; Dec. 5, 2016). The Clearinghouse final rule did not affect or otherwise allow use of the CDL number for a CDL driver operating under another DOT agency's regulation and subject to a test not under part 382 (*e.g.,* employers of CDL drivers under the Pipeline and Hazardous Materials Safety Administration (PHMSA) or FTA).

To address the concerns about using SSNs and to conform to the existing requirement for CDL numbers to be used for employees regulated by FMCSA, we proposed changing the provisions of part 40 requiring the use of the employee's SSN or an employee ID number. We proposed a definition of the term ''SSN or Employee ID No.'' in § 40.3, as well as amendments to sections pertaining to the CCF and/or the Alcohol Testing Form (ATF), and in SAP reports. We proposed to require CDL numbers for FMCSA-regulated employees, for consistency with part 382. We proposed to add that identification numbers issued by States or the Federal government would also be allowed for employees not regulated by the FMCSA.

We received several public comments on this issue. The majority of those commenters favored allowing alternate identification numbers, citing concerns about the employee's security, privacy, and wanting to protect employees from potential identity theft. Some commenters suggested we only allow the last four digits of the SSN to be used. Those opposed to the proposed changes thought the only modification to part 40 should be to allow FMCSA-regulated employees to use their CDL numbers. Those commenters thought allowing others to use their driver's license number would result in violations unrelated to FMCSA-required testing erroneously being reported to the FMCSA's Clearinghouse. Finally, some of the commenters asked what to do when presented with a form of identification that has ''expired''.

Switching to using the last four digits of the SSN would not resolve the concerns about privacy and identity fraud adequately because some part of the SSN would still be used. In addition, for laboratories that receive thousands, and in some cases tens of thousands, of CCFs each day, it is not uncommon for those labs to receive multiple CCFs with the same last four digits.

We acknowledge the concerns about violations being incorrectly entered into the FMCSA Clearinghouse if an employee who is not regulated by the FMCSA provides their driver's license number. Some States use the same number format for a CDL as for any private driver's license number issued by the State. In some States, the CDL holder does not have a separate private license for driving their own car—only the CDL is issued. However, the essence of the concern is not so much about the number being used as it is about the entry of incorrect data into the FMCSA's Clearinghouse by program participants.

We have weighed the various considerations raised by the commenters and have adopted the proposed language in each section because the confusion the commenters are concerned about can be addressed with the program participants who may incorrectly enter data into the FMCSA's Clearinghouse. We will not remove the option for an employee to provide their SSN because that specific term currently appears on the CCF. In the future, if that term is ever removed from the CCF, which belongs to HHS, we would consider amending these part 40 provisions to exclude the SSN.

The new definition ''SSN or Employee No.'' will allow a collector, MRO, SAP, Breath Alcohol Technician (BAT), Screening Test Technician (STT) or other service agent or employer to utilize only the CDL number and State of issuance for FMCSA-regulated drivers tested under part 382, and to allow the CDL number to be used as an option on tests conducted under the authority of the other DOT agencies. The definition also allows any other State- or federally issued identification number to fulfill the part 40 requirement for a unique identification number.

Since States often do not differentiate between CDL numbers and private driver's license numbers, we will continue to remind employers and collectors to be very specific about the exact DOT agency regulation under which the employee will be tested. An employer directly, or through its service agent, must check the block for the ''Specific DOT Agency'' on Step 1.D. of the CCF. The name of each agency is provided in Step 1.D. (*i.e.,* FMCSA, FAA, FRA, FTA, PHMSA, USCG). When the employer sends the employee to the collection site, the employer must be clear with the collector as to what specific DOT agency regulates the test, as required by § 40.14(g). The collector, in turn, is expected to ensure that the correct DOT agency is checked, unless the employer has already checked the box. If unsure, without delaying conducting the actual test, the collector should contact the employer to ask what specific DOT agency regulates the test. Checking the correct block in Step 1.D.'s ''Specific DOT Agency'' block is as important as checking the correct box for the ''Reason for Test'' in Step 1.E. Employers and collectors are, and should be, aware that not knowing the correct reason for the test may subject an employee wrongfully to a direct observation collection or may fail to ensure that an employee is subject to a direct observation when they need to be observed. Similarly, checking the wrong box in Step 1.D. will have potentially incorrect consequences if the employee has a non-negative result. We will continue to educate and remind employers and collectors to appreciate the need for identifying the correct DOT agency on the testing form.

If an employee is wrongfully identified as an FMCSA-regulated employee during the collection process, the MRO is likely to discover this in the verification interview for a non-negative result. For example, during the verification interview some MROs simply ask the employee what they do for the employer. In any case, if the MRO finds the FMCSA box was incorrectly checked, the MRO must not report the verified non-negative result to the FMCSA's Clearinghouse. The only employees whose results are ever reported to the FMCSA's Clearinghouse are those employees who have taken an FMCSA-regulated test.

Similarly, if the employer is determining whether or not a collection site refusal has taken place and finds that the FMCSA box was incorrectly checked, the employer must not report the refusal to the FMCSA's Clearinghouse. Since only the employer or the MRO can enter a violation into the FMCSA's Clearinghouse, these are the only program participants who can correct their own entries, including when they have incorrectly identified an employee as an FMCSA-regulated individual when they are not.

Finally, we recognize the issue of employees using expired forms of identification at the collection site has been an ongoing problem. As we have advised for several years, we want collectors to know it is acceptable to accept an expired photo ID issued by a Federal, State, or local government agency, if the ID has not been expired for more than 1 year. This information is contained in the current Office of Drug and Alcohol (ODAPC) Urine Collection Guidelines and will be added to the ODAPC Oral Fluid Specimen Collection Guidelines.

Medical Review Officer Reversal of Test Cancellations

In part 40, there are many instances where an MRO would cancel a drug test result. These are set forth in § 40.133 (when verifying an invalid result without a donor interview), § 40.145 (if there is a legitimate explanation for an adulterated or substituted result), § 40.159 (for various specific explanations for an invalid result), § 40.161 (after laboratory rejection of a fatal flaw or an uncorrected flaw); § 40.187 (if a split fails to reconfirm or bottle B is unavailable for testing); § 40.191 (if there is a refusal to go for a medical examination where there is no contingent offer of employment on a pre-employment test); § 40.193 (where there is an acceptable medical explanation for an insufficient specimen); § 40.195 (if a medical examination reveals clinical evidence of drug use), and § 40.199 (after the laboratory reports a fatal flaw). We did not propose any of these types of cancellations as grounds for reversing a cancelled test.

Instead, the proposal addressed situations where a test is cancelled due to paperwork errors, which would be correctable flaws, but which were not corrected before the MRO sent the cancellation to the employer. Those are specifically found in §§ 40.203 and 40.205. In the preamble to the NPRM and in the proposed regulatory language of § 40.207(d), we gave the example of the MRO reversing the cancellation of a test where the missing or delayed paperwork is subsequently found and provided to the MRO. We also said that we did not intend for MROs to reverse the cancellation of a test that was rejected for testing by a laboratory.

There were several comments on this proposal. The commenters supportive of the proposal understood this as an administrative fix to allow an MRO to uncancel a test result involving a correctible error the MRO decided was not timely corrected. Many of those who opposed the proposal were concerned about DOT allowing MROs to reverse cancellations that were related to the fairness and accuracy of the test. Those were not the intended cancelled tests subject to the proposed change. Even so, we understand the questions in the preamble for public comment could have led commenters to conclude otherwise. The comments received have helped to shape a better final rule for this provision, which we have adopted with modifications.

Some MROs and other service agents said they already thought MROs could reverse a cancelled test. They did not see a need for a change because reversing cancelled tests was already part of their MRO practice. It is for exactly this reason we needed to consider modifying the regulation because these MROs had no authority to reverse cancellations. Throughout the history of part 40, there has not been a regulatory provision that allows an MRO to ''uncancel'' a test that the MRO has cancelled. We proposed a new paragraph § 40.207(d) to allow an MRO to reverse the cancellation of a test in very specific and limited circumstances.

The American Trucking Association supported the change as a useful ''administrative fix'' that would save money for random tests. They gave a solid example of the impact of the problem when they said: ''the employee is sent for a random test; the paperwork for the collection site is lost, so the MRO cancels the test; the paperwork is recovered, and the test is counted toward the employer's random testing requirement.'' As such, the proposal is a ''rational administrative fix that will not have a detrimental impact on safety . . . to address situations in which administrative errors require a driver to retake a drug test unnecessarily.''

The Association of American Railroads and American Short Line and Regional Railroad Association supported the proposal. They said this ''proposed amendment would be helpful in situations where an employer requires a negative result (*e.g.,* a pre-employment, return-to-duty or follow-up test), and would avoid the burdens and inconvenience of requiring an employee to travel for, or otherwise accommodate a test, more than once.''

Several consortia/third party administrators (C/TPAs) agreed with the proposal. One C/TPA referred to ''circumstances that missing paperwork is located after the MRO has cancelled the result. This would allow the MRO to then report the result.'' To illustrate the benefits of the proposal, the commenter described a frequently occurring scenario they encounter: ''a delay in receiving information that was inadvertently omitted from the custody and control form. In these situations, if the test has already been cancelled, a driver must be sent back to the collection facility to provide a new sample constituting a significant additional cost for motor carriers and drivers. Allowing un-cancelling of tests is a commonsense solution to an unintended consequence.''

Some who supported the proposal wanted the Department to ensure it would be used in narrow circumstances. They supported reversals of cancellations only in tests cancelled for administrative errors that are correctible flaws. We added language to the final rule, in the form of a parenthetical, to note correctible flaws arising under §§ 40.203 and 40.205 would be examples of what is reversible.

Several commenters, including the National Drug and Alcohol Screening Association (NDASA), C/TPAs, collector trainers, and a transit agency noted an existing issue within part 40: an MRO cannot cancel a test without having Copy 1 and Copy 2 of the CCF in the MRO's possession, per §§ 40.129(b), 40.161(a) and (c). These commenters said, if the reason the MRO is cancelling the test is because the CCF paperwork is missing, then part 40 should allow the MRO to cancel the test without holding either or both Copies 1 and 2 of the CCF. One commenter recommended we allow the MRO to cancel the test by noting on the bottom of Copy 1 that Copy 2 is missing. Another commenter suggested allowing the ''MRO to issue a report that the test is cancelled if the MRO has not received a legible [CCF].''

In response to the concerns from these commenters about an MRO's inability to cancel a test without the proper paperwork, we have made changes to part 40. In § 40.129(b), as a logical outgrowth of the comments, we have struck the words ''test cancelled'' so that cancelled tests do not require both Copies 1 and 2, as the other verified non-negative results listed would require. We have modified §§ 40.161(a) and (c) to allow an MRO to use either copy or to issue a report, if Copy 1, Copy 2, or both are missing. Also, we have made a technical amendment to insert quotation marks around ''rejected for testing'' and the word ''laboratory'' in § 40.161(c). As in §§ 40.127(c)(1) and 40.129(b)(1), we remind the MRO of the obligation to try to obtain Copy 2 or any other CCF copy containing the employee's signature before cancelling a test. If a copy of the CCF with the employee's signature cannot be obtained, then the MRO can use the report format set forth in § 40.163(c)(1) through (9).

The commenters who opposed the proposal to allow an MRO to uncancel a test included organized labor (*e.g.,* the Transportation Trades Department (TDD), the Airline Pilots Association (ALPA), and the National Air Traffic Controllers Union), Quest Diagnostics, and others. One commenter thought this would affect so few tests that it was not worth doing. Another opposing commenter objected to allowing laboratories to cancel tests and requested that the proposal restrict the MROs to a 30-day window for reversing a cancelled test. Another commenter

said the proposal will ''undermine the finality of these MRO administrative determinations, and raise practical concerns with undoing such actions.'' That commenter also wanted DOT to create a process for appealing MRO decisions, which is outside the scope of this rulemaking. One commenter said the proposal ''could in effect increase the frequency of drug testing beyond what is reasonable and justified. We are also concerned that it would create administrative burdens to the employees being tested who would not have the same finality they currently have if a test is canceled.'' Another commenter was concerned that, ''If an individual is told the test is cancelled, they may decide not to take steps to protect themselves (that they would otherwise have done had they been notified of an 'uncancelled' test), only to later learn that the test has been 'uncancelled'.''

We see no reason to limit the MRO's reversal to 30 days, but have maintained the proposed requirement for an MRO to consult ODAPC if the reversal of the cancellation occurs more than 60 days after the test was cancelled. We do not have exact data on the number of cancelled tests this will impact each year because, as we said earlier and the commenters supported, many MROs were already reversing cancellations because they mistakenly thought they had this authority.

Quite often the cancellations occur when an MRO is unable to get the information needed from the collection site. Often, MROs cannot reach the collector. Sometimes, the MROs must contact a general call center and wait days, or longer, to reach the collector who did not send the needed paperwork (*i.e.,* Copy 2 or a memorandum of correction). This delay in reaching the collector should be eliminated by the change to § 40.40 to require the collector to provide the telephone number where they can be reached more directly and promptly. Ensuring the MROs and their staffs have timely access to the collectors is likely to result in fewer cancellations. So, this is effectively a two-pronged approach to addressing the cancellation problem.

Allowing an MRO to reverse a result cancelled for administrative reasons will not increase the frequency of drug testing because there currently are many reasons an employee may be called back for a second test when an MRO cancels a test. Also, reversing the cancellation of a test would not reduce the finality of an employee's expectations because, if a second test is needed because of the reversal of the cancellation, an employee would not necessarily know if and when to expect a second test. Examples of this include when a split specimen is lost or damaged, then the employee must come back in for another test; or when a laboratory reports an invalid result and the MRO tells the employee to report for another collection. At times, if a negative result is needed (*i.e.,* pre-employment, return-to-duty, or follow-up), a cancelled test actually causes an employee to return for an unanticipated second test. This final rule will reduce the instances of those second tests.

An employee must make themselves available for an additional test when the employer directs them to go. Thus, the finality of a test has never been tied to the employee's expectations.

As for the concern that an employee ''may decide not to take steps to protect themselves'', we respectfully submit that the employee would not lose the right to have a split specimen tested or to request a litigation hold on the actual urine specimen. We hope this information eases that concern.

Another industry association and a C/TPA opposed the proposal because the employer may perform another test after the first is cancelled on a pre-employment, return-to-duty or follow-up test. On a similar note, another commenter said ''the ability to 'un-cancel' a test will cause significant confusion, particularly for those cases where a negative result is required (*e.g.,* for a pre-employment test) and the donor has likely already submitted to a second test.'' To avoid this problem, some commenters suggested only allowing an MRO to uncancel a test when the ''cancelled test did not qualify for recollection, [then] the MRO should have the option to invoke the same consultation requirement we have in [§] 40.149(a)(4).''

We believe part 40 already addresses these concerns. In a test where a negative result is not required (*i.e.,* random, reasonable cause/suspicion, or post-accident), the employer has no authority to send the employee for a second test after the first test is cancelled, unless the result of the first test was cancelled due to an invalid result. In a test where a negative test result is required (*i.e.,* pre-employment, return-to-duty, or follow-up), the employee should have been sent for a second test after the cancellation. Under § 40.162, an MRO is provided clear directions for handling multiple verified results for the same testing event, which the MRO can apply to reconciling a second test result with the reversed cancellation.

In the proposal, we included a requirement for a party seeking to reverse a cancellation to consult ODAPC if the decision is being made more than 60 days after the cancellation. This is the same consultation requirement we have in § 40.149(a)(4), where we allow an MRO to reopen a verified test after 60 days. Providing this information helps ODAPC to provide advice to MROs regarding what to consider and potential concerns. We received several supportive comments on this part of the proposal and have finalized it, as proposed.

V. Section-by-Section Analysis

The Department made a deliberate decision not to create a separate subpart of part 40 or to designate another part of Title 49 of the United States Code to house oral fluid testing. Since many of the provisions of part 40 can be applied to urine, oral fluid and other potential future testing matrices, we proposed to integrate new provisions concerning oral fluid testing within the current part 40 structure. In other sections, we proposed to revise current sections and their titles to specify they would only apply to urine testing.

§ 40.3 What do the terms used in this part mean?

We proposed to delete the definition of ''screening drug test'' because the term is not used in part 40. For consistency with HHS terminology, we have removed the defined term ''invalid drug test'' in the definitions section, § 40.3, and have updated the wording in the definition of ''invalid result'' to be consistent with the current language in the HHS mandatory guidelines for both urine and oral fluid. We have also updated §§ 40.123(c) and 40.129(a) and (d) to use the term ''invalid result''.

To harmonize part 40 with the HHS Guidelines and to update part 40, we have added seven defined terms. We have added ''alternate specimen'' as an authorized specimen of a type other than the one previously collected (*e.g.,* in a case where the initial collection was urine, oral fluid would be an alternate specimen). ''Cutoff'' is the quantitative point distinguishing a need for further testing or whether a laboratory result, for example, is positive or negative (*e.g.,* 2 ng/ml is the confirmatory test cutoff for a positive vs. negative oral fluid result reported by the laboratory for THC). We have added definitions for ''oral fluid specimen'' and ''urine specimen.'' We have added a sentence to the definition of ''oral fluid specimen'' to explicitly state that an oral fluid collection is a direct observation collection. ''Specimen'' is the generic term for any fluid, breath or material collected from someone for a

drug or alcohol test. We have added ''Undiluted (neat) oral fluid'', using the same language HHS uses in Section 1.5 of its Oral Fluid Mandatory Guidelines. We have also added a definition for the FMCSA's Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse (Clearinghouse). For the reasons explained in the Principal Policy section, we added a new definition for ''SSN or Employee ID No.''.

We have modified seventeen definitions in § 40.3. For the most part, the changes are not substantive, and conform part 40's wording with that of the HHS guidelines. For example, ''collection container'' refers to vessels used in all collections, whether of urine or oral fluid. In the definition of ''specimen bottle,'' we added that the term could include ''tube'' or ''vial'' used in oral fluid testing.

One commenter requested we change the definition of ''split specimen'' to allow two separate specimen collections. This would be inconsistent with OTETA's requirement for a single specimen to be collected from and subdivided in the presence of the tested individual. Thus, we have adopted the proposed definition of ''split specimen'' with no changes.

Most of the comments were supportive of the proposed changes. Thus, we have adopted the proposed changes to § 40.3.

§ 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?

The Department has made minor changes to paragraphs (b), (c), and (d) of this section for clarification in the context of oral fluid testing. For example, paragraph (d) is applicable only to urine testing, since oral fluid testing is not part of the normal medical examination procedure to which the paragraph applies.

We have redesignated the current paragraphs (e) and (f) as new paragraphs (f) and (g). We have added a new paragraph (e) to specify that a drug or alcohol test administered as directed by a medical examiner, exclusively as part of a medical examination required for an employee to qualify for a certificate or license, is not a DOT drug or alcohol test under part 40 and related DOT agency drug and alcohol testing rules. For example, if a certified medical examiner decided to give a motor carrier driver a drug test as part of an examination for medical card purposes, that would be a ''non-DOT test.'' An employer could request a required DOT pre-employment test be conducted when the medical examination is being conducted, as currently permitted under 49 U.S.C. 31306(d).

We have added a new paragraph (h) to further emphasize that DOT drug and alcohol tests are authorized to be conducted only on safety-sensitive employees as designated in the agency drug and alcohol testing regulations. DOT-regulated tests must not be conducted on non-regulated persons (*i.e.,* those who do not perform DOT-regulated safety-sensitive duties). DOT testing is a legal warrantless search and seizure permitted by the Fourth Amendment of the Constitution and is only applicable to regulated persons. The DOT's strong interest in maintaining transportation safety, when weighed against an individual's right to privacy, allows DOT's regulated testing to pass Constitutional scrutiny. See *Bluestein* v. *Skinner,* 908 F.2d 451 (9th Cir. 1990); *Skinner* v. *Railway Labor Executives' Assn.,* 489 U.S. 682 (1989); *Treasury Employees* v. *Von Raab,* 489 U.S. 656 (1989). There is no Federal transportation safety interest in using this testing for individuals other than safety-sensitive employees. Consequently, DOT testing cannot be conducted on employees not regulated by the DOT agencies. Companies do not have the authority to conduct DOT-regulated testing on non-regulated employees. DOT regulations also do not allow non-DOT testing to satisfy an employer's obligation to meet its minimal annual random testing rate for DOT testing.

Some individual commenters supported the proposed modifications to paragraphs (d), (e), and (f). Other commenters noting the changes to § 40.13 were also supportive. We have finalized the proposed changes.

§ 40.14 What information must employers provide to collectors?

We received one comment in support of the modification we proposed to § 40.14(b). We have adopted this change to add clarity and to recognize that, in the motor carrier industry, FMCSA requires the CDL to be used for purposes of the Drug and Alcohol Clearinghouse (Clearinghouse) (*see* 49 CFR 382.705).

We have adopted our proposal to add a new paragraph (k) for ''the specimen type to be collected''. We had proposed to add paragraph (l) to specify if a urine test is to be directly observed. Although there were no comments on paragraphs (k) and (l), we have decided to remove the proposed paragraph (l) because it is redundant with current paragraph (i).

§ 40.21 May an employer stand down an employee before the MRO has completed the verification process?

Under part 40 and the corresponding DOT agency regulations, an employer can request a waiver to ''stand down'' an employee from performing safety-sensitive functions based on a laboratory confirmed non-negative result (*i.e.,* positive, adulterated, substituted or any combination thereof) until the MRO issues the employer a verified result. The authority to stand down an employee is very limited and requires an employer to obtain an actual waiver from the DOT agency before implementing a stand down policy.

As with any laboratory-confirmed positive, the MRO may verify the final result as negative (*e.g.,* if an employee offers a legitimate medical explanation such as a legal prescription). We proposed to add a new paragraph (c)(2)(vii)(C) of this section to prevent the employer to send an employee back in for another test using a different specimen type after receiving a verified negative result. We did not want the employer to order a second test using a different methodology to see if the window of detection could later impact the result. If the MRO cancelled the test (*e.g.,* per the requirements of § 40.159), then the employer can send an employee in for an alternate specimen collection.

We received one comment on this proposal. The combined commenter, a C/TPA and MRO practice, asked us to clarify in the final rule preamble that this applies to more than laboratory positives. Specifically, it also applies to laboratory-confirmed adulterated and substituted results. We have made this distinction in the preamble, as it already exists in § 40.21(b). Other than making this change, we have finalized the changes as proposed.

§ 40.23 What actions do employers take after receiving verified test results?

We proposed minor changes in this section to account for the use of oral fluid or urine in the event of an invalid specimen. In § 40.23(f), we proposed flexibility in allowing the subsequent direct observation collection to either be an oral fluid collection or a urine collection under direct observation. In paragraphs (f)(1) and (5), we offered language to acknowledge a urine collection would need to be directly observed. As written, it is clear oral fluid collections are directly observed.

We received two comments. One commenter supported allowing the employer to choose an alternate specimen type for the directly observed collection. The other commenter said an employee could deliberately cause their urine test to be invalid, then refrain from drug use for a few days and test negative on an oral fluid test. This commenter was concerned employees

would use the windows of detection for the different methodologies to their advantage.

While we recognize the concern of the second commenter, we want to emphasize that oral fluid is a scientifically valid form of testing for the DOT-regulated drug testing program. Our program is deterrence-based. With established cutoffs, we do not seek to detect the presence of every drug, we only seek to detect drugs at their cutoffs and deter illegal drug use. Since HHS has determined oral fluid testing is scientifically viable and forensically defensible, we are willing to leave it to the determination of the individual employers to select the methodology acceptable to them under given circumstances. For this reason, we encourage employers to look at all aspects of using urine drug testing versus oral fluid drug testing as their choice for a particular test, in accordance with part 40.

In consideration of the comments and for the reasons set forth above, we have finalized the proposed changes to § 40.23.

§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

Beginning January 6, 2020, FMCSA implemented its Clearinghouse regulation, set forth in part 382, subpart G. As part of those requirements, FMCSA-regulated employers with drivers subject to the drug and alcohol use and testing regulations set forth in part 382 to query the Clearinghouse drug and alcohol database for information about an employee's past drug and alcohol violations that occurred while the driver was employed by another FMCSA-regulated employer. The Clearinghouse regulations apply only to employers and employees subject to the requirements of part 382.

Until January 2023, FMCSA-regulated employers had dual requirements. They had to conduct a pre-employment query of the Clearinghouse, as required by § 382.701(a), and continue to follow the procedure of § 40.25, as set forth in § 382.413, to request a prospective employee's drug and alcohol violation information from previous DOT-regulated employers.

We have added § 40.25(a)(2) to reflect that, beginning January 6, 2023, the requirements changed for FMCSA-regulated employers, who now must rely solely on querying the Clearinghouse, in accordance with § 382.413(b), to determine whether an applicant violated FMCSA's drug and alcohol testing regulations while employed by other FMCSA-regulated employers. For example, after January 6, 2023, a motor carrier vetting a prospective employee is required to check the Clearinghouse to determine whether the driver's previous FMCSA-regulated employer(s) reported drug and alcohol testing program violations by that driver.

However, since the Clearinghouse does not include drug and alcohol violations committed by employees of other DOT agency-regulated employers, FMCSA-regulated employers must continue to comply with the requirements of § 40.25 when hiring an employee who has been employed by another DOT agency-regulated employer.

Under the new § 40.25(a)(3), we remind FMCSA-regulated employers to request the information about the employee listed in paragraph (b)–(j) of this section from any other DOT agency-regulated employer for whom the employee previously worked, if the employee was subject to another DOT agency's drug and alcohol testing program. If an applicant's past employment was with an employer regulated by, for example, the FTA or the FAA, the gaining motor carrier employer must continue to comply with the requirements of § 40.25 by requesting the required information directly from those employers, in accordance with § 382.413(c). This is necessary since drug or alcohol violations incurred while the driver was employed by a DOT agency other than FMCSA will not have been recorded in the Clearinghouse.

Although FMCSA-regulated employers must query the Clearinghouse for an employee's drug and alcohol testing information, employers regulated by the other DOT agencies do not have access to the Clearinghouse but must find out this important safety information for employees who previously worked for motor carriers. For example, if an FAA-regulated employer sends a § 40.25 inquiry to a motor carrier, the motor carrier must respond to that inquiry in accordance with § 40.25(h). Thus, the Clearinghouse will address motor carrier inquiries, but each FMCSA-regulated employer is required to retain the records and be ready to respond to § 40.25 inquiries from other DOT-regulated employers.

We did not receive any substantive public comments on these changes, which merely conform to FMCSA's requirements. We have finalized the proposed changes.

§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT Agency?

We proposed a simple editorial change, substituting a reference to appendix J for a reference to appendix H. This conforms to a re-designation of the appendix letters but would make no substantive changes to the section or form. We did not receive any public comments on this change. We have adopted this change as proposed.

§ 40.29 And Similar Sections

We proposed deleting several sections (§§ 40.29, 40.37, 40.113, 40.169, 40.189, 40.217, and 40.313), which listed other sections of part 40 touching on a given topic (*e.g.,* employer responsibilities in § 40.29). These lists of cross-references were intended to assist readers in finding other relevant information before part 40 was searchable electronically. In the more than 20 years since we placed these sections into part 40, electronic search tools have become sophisticated and ubiquitous, making these sections no longer necessary.

A small number of commenters said they liked these cross references, but the majority of commenters said that the cross-references have outlived their usefulness because of electronic search options. One commenter said, ''Please continue to make decisions about organization of part 40 based on logic, without regard to previous editions of the rule. Those of us who look at it every day need to do our jobs and learn the new numbers.'' Another commenter noted, ''it would not be a burden if the cross referencing was removed because the titles of the Subparts clearly identify the subject matter and the title/s of the section/s under those Subparts are worded in the format of a question with the answers found in that section.''

Therefore, we have adopted the changes. We removed the cross-reference sections of §§ 40.29, 40.37, 40.113, 40.169, 40.189, 40.217, and 40.313, as proposed.

§§ 40.31 and 40.35—Collectors and Their Qualifications—

We have updated § 40.31 to include oral fluid collectors who can collect DOT drug testing specimens. We have added a new § 40.35 to separately specify the requirements for collectors of urine and oral fluid specimens, respectively. Adding this section required renumbering existing § 40.35 to become § 40.36. We have paralleled the new § 40.35 as closely as possible to our existing training requirements for urine specimen collectors in § 40.33. We have added language to parallel § 40.213(b) for training on the specific devices.

In addition, we have included a clarification for both urine and oral fluid collectors prohibiting relatives, close friends, and certain employees (*e.g.,* co-worker or immediate supervisor) from conducting collections. This is consistent with existing guidance in the Department's Urine Specimen Collection Guidelines. We received substantive public comment on these changes. Several comments supported the following proposed wording: ''a collector must not be related to the employee being tested (*e.g.,* spouse, ex-spouse, relative) or a close personal friend.'' Other commenters, including Quest Laboratories, NDASA, and the Substance Abuse Program Administrator's Association (SAPAA) agreed with the exact wording proposed. An aviation employer, Flight Safety International, said they thought the list of specific relationships listed is too limited and would prefer the following wording: ''the collector shall have no conflict of interest with regard to the donor's result''.

On SAP commenter asked that we not allow supervisors or managers to serve as collectors. The Aircraft Mechanics Fraternal Association asked us to clarify whether management is included in the category of those prohibited from collecting a specimen. The Passenger Vessel Association supported the existing prohibition on collections by immediate supervisors in the current § 40.31(d) is sufficient. This commenter said: ''While the limitations proposed in 49 CFR 40.31(d) are problematic for vessels that are often operated by a small number of crew members with a strict supervisor/subordinate organization, that same paragraph finishes with caveat 'unless no other collector is available and you are allowed to do so under DOT Agency drug and alcohol regulations,'. . .'', which this commenter supported.

We agree with the Passenger Vessel Association and other commenters, who supported the wording of the newly renumbered § 40.31(d). We did not change this long-standing provision cautioning against collection by the immediate supervisor of the employee being tested, which is now found in § 40.31(d) (formerly in § 40.31(c)).

Regarding the qualifications for oral fluid collectors in § 40.35, those who commented generally supported the proposal and we have, therefore, adopted it as proposed. One C/TPA wanted to see training similar to urine specimen collectors plus completing the manufacturer's training for each oral fluid testing device the collector will use. A large C/TPA and MRO practice said all collectors should be trained and qualified to perform both oral fluid and urine testing, and device-specific training should come from the manufacturer. One commenter, who performs a large number of trainings annually, said we should look at this the way we view alcohol testing training, which means there needs to be comprehensive part 40 training plus device-specific training. One commenter suggested we call any qualified oral fluid collector a ''Drug Screening Collector Technician (DSCT)'' to be consistent with Breath Alcohol Technicians and Screening Test Technicians. This commenter also recommended having oral fluid collectors: join the ODAPC list serve; be trained to all steps of the CCF, and in problem collections, fatal flaws, and collection site integrity; undergo five error-free mock collections; and have a requirement to requalify every five years. Similarly, NDASA and several C/TPAs wanted oral fluid collector training to include all of the proposed training elements, which mirrored the urine collector training with additions specific to oral fluid collections. SAPAA also commented in favor of device-specific training. Several commenters said there should not be five error-free mock collections per device.

Regarding creating a model training course for oral fluid testing and urine testing similar to the one we have for alcohol testing, we did not propose to create and require such model courses in this rulemaking. However, we will take the requests of these commenters into consideration in formulating future guidance.

We asked for comment about who should be considered appropriate for monitoring the mock collections necessary to qualify an oral fluid collector. We modeled the criteria for the oral fluid monitor after what we have set for urine collections in § 40.33(c): one who has regularly conducted DOT drug test collections for a period of at least one year; has conducted collector training under this part for at least one year; or has successfully completed a ''train the trainer'' course. The commenters supported keeping the same requirements for the mock collection monitors for oral fluid as for urine. Several commenters noted it would be inadvisable for the Department to allow individuals who have been collecting only non-DOT specimens to automatically qualify to train oral fluid collectors under part 40 but did not provide a reason for their rationale. Other commenters asked if virtual training and virtual mock collections were permissible. Both have been allowed for urine collector initial training, error correction training and for requalification training. Consequently, both will be permitted for oral fluid collector initial training, error correction training and for requalification training.

One commenter asked about whether there must be two or three individuals involved in the mock proficiency demonstrations. Whether they are in-person or virtual, we have always required at least two individuals to interact during the mock collections, while a best business practice is to have a third person act as the donor, so that the trainee could have the experience of ''collecting from an employee'' without actually collecting a specimen during the training. We believe this is an extremely important requirement because collectors must deal with real people and real specimen collections. If the monitor and trainee are the only participants in the mock proficiency collections, then the monitor must also perform the role of the donor—by interacting meaningfully with the collector trainee to make certain the trainee gets the experience of both uneventful and problem collections. The easiest way to achieve this result is for there to be a third person playing the part of the donor. However, if there are only the monitor and the trainee, but the monitor meaningfully plays the roles of the cooperative and uncooperative donors, the intent of part 40 is fulfilled.

There were comments recommending oral fluid collectors be trained by the manufacturer(s) of the respective oral fluid device(s) the collector intends to use. Some recommended collectors take the manufacturer's online course to get qualified to use each specific device. Others distrusted having specific device training done through the manufacturer's website because they said that would increase costs. One commenter said not to allow manufacturers to train for their own devices because the manufacturer would introduce bias, but a third-party conducting training would not have that bias. One commenter suggested the collector instructor take the manufacturer's device-specific training and use that as the basis for training others. Similarly, a couple of commenters recommended using specific training approved by the manufacturer for its own device. Labcorp strongly encouraged us to require ''collectors to complete manufacturers' training on each collection device that will be used for DOT-regulated collections as individual devices have unique features with

respect to proper placement in the mouth, timing, and specimen sufficiency indicators.'' One C/TPA said train the trainer courses will be widely available, as they are for urine testing, and oral fluid device manufacturers may take the lead on this. Other commenters discussed the user-friendly nature of the devices (*i.e.,* they usually come with instructions for use or those instructions can easily be read on the manufacturer's website prior to the collection).

We agree with the commenters who were hesitant about specifically requiring the manufacturer's training be used. Considering the user-friendly nature of the devices and that instructors will be teaching oral fluid collectors to use each device the collector is expected to deploy, we amended the proposed language. We have adopted the requirement for a collector to obtain ''training to proficiency in the operation of the particular oral fluid collection device(s) you will be using.''

The collector must demonstrate proficiency for each device. We acknowledge several commenters did not want proficiency demonstrations for each device on which a collector is instructed. However, we disagree because the point of the initial proficiency demonstration is to prove the collector was trained on a particular device to full proficiency. If the collector will use more than one device, then the collector needs to prove initial proficiency on each device.

The collector must check the expiration date of the device in each mock collection because using an expired device or failing to enter the ''Split Specimen Device Expiration Date'' on Step 4 of the CCF would be a fatal flaw under § 40.199. Since the collector will use an oral fluid device that will collect a single specimen, which is then subdivided in the presence of the donor, only one device is to be used. The collector must make the entry on the option marked ''Split Specimen Device Expiration Date'' instead of the option marked ''Primary/Single Specimen Device Expiration Date''. We have been clear that part 40 does not allow the use of a ''primary'' collection device, meaning one of two collection devices. In addition, part 40 does not allow for a ''single specimen'' collection device because all devices must be capable of collecting both a primary and split specimen. For DOT-regulated collections, all devices will collect a split and have an expiration date. The collector will enter the expiration date of the single device in Step 4 of the CCF, on the line marked ''Split Specimen Device Expiration Date,'' which appears directly above Step 5A. The collector would not fill in the ''Primary/Single Specimen Device Expiration Date'' in addition to the ''Split Specimen Device Expiration Date'' on the CCF.

We consider proficiency demonstrations to be extremely important. It is one thing to receive instruction on how to use a device, but demonstrating proficiency is literally where the ''rubber hits the road.'' If a collector cannot demonstrate proficiency on a device, then the instruction received on the use of the device will not remain with the collector in real world collections.

§ 40.33 What training requirements must a collector meet for urine collection?

There were no comments to changing the title of § 40.33 to reflect its focus on urine collectors. We also proposed a change to § 40.33(f) to clarify that damage to a specimen resulting in it being cancelled does not require retraining of the collector, unless the error actually occurred during the collection process. When a specimen is damaged by a delivery truck, sort facility, or other part of the transportation process, or is lost in transit, it is not the result of an error by the collector during the collection process. However, when such damage during the transportation process occurred, some MROs had required collector retraining.

Our proposal to clarify that a collector is not subject to the time and costs of retraining for errors outside the collection process, such as in transportation process events, was met with only supportive comments. In response to the following, we have adopted the change to § 40.33(f).

One commenter, NDASA, said, ''Unnecessary error correction has been required for far too many circumstances that are beyond the control of the collector, costing time and cancelled tests.'' A combined MRO and C/TPA comment supported the proposal, saying ''Previously this was too subtle of a distinction and collectors have been unnecessarily subjected to error correction training when a situation was not their fault. An example is when a bottle leaks in transit where fault is difficult to assign.'' In further agreement, Quest Diagnostics said, ''Similar to urine collections, problems that occur during shipping that are out of the collector's control should not be held against the collector.'' LabCorp also agreed with this proposed change.

Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine and Oral Fluid Collections

Some commenters appeared to be confused about testing oral fluid specimens for drugs versus testing saliva for alcohol misuse. Oral fluid drug testing and saliva alcohol testing are completely distinct from each other. The devices, procedures and outcomes are never interchangeable. The provisions applicable to oral fluid testing procedures were proposed as additions in subpart D. The saliva alcohol testing provisions in subparts K through L remain unchanged.

We proposed to reorganize subpart D to accommodate the addition of provisions pertaining to oral fluid drug testing. Sections applying to the DOT drug testing process generally, regardless of specimen type, come first. Renumbered §§ 40.40 and 40.41 contain the content of previous §§ 40.45 and 40.47, concerning the use of the official ''Federal Drug Testing Custody and Control Form'', which we continue to refer as the ''CCF'' in all DOT collections. The 2020 CCF and instructions for completing the CCF for both urine and oral fluid collections are available on the HHS website, *https://www.samhsa.gov.* The DOT has posted the 2020 CCF on our website, *https://www.transportation.gov/odapc.* Some commenters specifically requested ODAPC to provide Specimen Collection Guidelines for both oral fluid and urine, in one combined document. Since not every collector intends to perform both types of collections, we will provide an ODAPC Oral Fluid Specimen Collection Guidelines document, separate from our Urine Specimen Collection Guidelines, after the publication of this final rule.

We proposed changes to the sections of subpart D, including the title of the subpart, which contain the word ''urine'' or a derivative of that word, if those sections would apply to both urine and oral fluid testing. We added the words ''and Oral Fluid'' to the title of this section to emphasize subpart D applies both forms of DOT-regulated drug testing collections. We proposed the language ''any other appropriate contact information'' to permit the inclusion of email addresses or other means of contacting the appropriate parties in the redesignated § 40.44(c)(2). We asked for public comment regarding removing requirements related to fax numbers on the CCF, allowing the fax number if the parties have one, or whether fax numbers were still relevant.

We proposed a provision allowing the Designated Employer Representative's (DER) name and contact information to

be preprinted on the CCF. We asked the laboratories about the availability of space on the CCF to pre-print the information, as well as the logistics and timeliness of sending out updated CCFs with the new DER information. To recognize the responsibility of collectors, as well as collection site operators, for proper collections, we have added ''collectors'' to the title of § 40.43.

As amended, the newly reorganized §§ 40.42–40.45 covers urine testing (renumbered § 40.42 in the amended rule contains the material previously found in § 40.41, while renumbered §§ 40.44 and 40.45 contain the material previously found in §§ 40.49 and 40.51). To parallel with their urine testing counterparts, new §§ 40.47–40.51 have been added to address oral fluid testing, specifically.

We proposed to modify renumbered § 40.40 to clarify what address and telephone number a collector must provide on the CCF. In January 2002, ODAPC issued a Question and Answer (Q&A) explaining that the collection site address should not be a corporate or ''main office'' address. In addition, the Q&A stated that the collector's telephone number on the CCF should be the number to directly reach the individual collector and/or the collector's supervisor and not a corporate ''toll free'' number to a call center. With the modification to § 40.40, if an MRO, laboratory, employer or any DOT staff need to speak with the collector, the telephone number provided on the CCF must give access directly to that collector and/or the collector's supervisor during the collection site's business hours. The collector must not provide a number for a call center. Since this amendment makes the collection site address and collector's telephone number part of the regulatory requirements, we will withdraw the January 2002 Q&A because it is now unnecessary.

If CCFs had already been printed before this final rule was published, the call center number may be on the forms. Service agents (*i.e.,* C/TPAs and collectors) and employers can use these preprinted forms, but they need to cross out the incorrect telephone number and write in the correct telephone number and/or collection site address. There is no need to incur the cost of destroying these CCFs, but we would expect they will no longer be generated with the call center telephone numbers or incorrect addresses after this final rule becomes effective. However, we want to remind collectors and collections sites that they have the responsibility to keep their information current with the laboratories.

We did not receive comments strongly opposing the addition of email addresses, but there were strong proponents for and against using fax numbers. Some commenters said fax machines are outmoded by more secure electronic equipment. LabCorp supported removing the fax number requirement. One commenter said fax machines tend to produce less legible and sometimes illegible copies of the recipient because some labs use lighter ink on their CCFs. One commenter specifically supported replacing the requirement for fax numbers on the CCF with the option and space to include a either a fax number or email address to transmit the CCF to others. In support of using fax numbers, one commenter said faxes are ''still a consistent use of transmitting information in a secure manner. Not all organizations are set up with secure transmittal methods and fax still remains more secure than email and is used between clinics, labs and MROs as well as with employers.'' A large C/TPA and MRO practice supported the continued use of faxes: ''While some collection sites are getting rid of fax numbers, we do not have widely available access to their email addresses. Fax is still commonly used to communicate between collectors, MROs and labs. Confidential communications with collection site should be encrypted yet some of their systems will not allow for this. Faxing still plays a role in our business world and systems are available to keep the information secure in transit.'' Another C/TPA commenter wanting us to keep fax numbers echoed, ''maximizing the usage of electronic mail and other digital means for document transfer is the most efficient method of communication available today. However, fax communications are still prevalent in the industry, and at this point still an unfortunate necessity.''

In response to the comments, we have decided to keep the option of including a fax number on the CCF, but not require its use. Since many entities no longer use fax machines, it would be an unintended cost to require them to reinstate them. Consequently, in § 40.40(c)(2), we finalized the following proposed language: ''Fax numbers may be included, but are not required.''

There were only opposing comments on the idea of including the DER's name and contact information pre-printed on the CCFs. Laboratories, C/TPAs, MROs, and collector trainers said that DERs change too frequently to pre-print a specific name on the CCF, and to fill that information in on the CCF at the time of the collection. One commenter said that, even on an electronic CCF, it can be confusing to need to change the actual DER's name if it is pre-set in the electronic system. Many commenters said pre-printing this would be a waste of money and time because the pre-printed DER names and contact information would need to be crossed out and the correct information written over the cross-outs. This would lead to further confusion.

Consequently, we have not included any requirement for pre-printing the DER's name. It was interesting and informative for us to know that using an electronic system would have difficulties adapting to changing DERs.

We asked for public comment on the use of the term ''dry mouth'' in § 40.48(c)(1). We explained ''dry mouth'' is shorthand, similar to the term ''shy bladder'' used for urine collections, for a situation in which an employee is unable to produce a sufficient specimen. We received no comments on this point, although many commenters had already adopted the term ''dry mouth'' in their own comments.

One commenter with a nationwide collection network said ''multiple oral tests can be conducted simultaneously when in a controlled/supervised environment. All while ensuring the integrity of the individual tests.'' That was the only comment opposing the proposal to require the collector to only collect from one employee at a time. We are concerned the distraction of conducting multiple collections at the same time could compromise the security of the collection and potentially impact the fairness and accuracy of the oral fluid test. Consequently, we have adopted this provision to allow the collector to conduct only one collection at a time.

§ 40.49 What materials are used to collect oral fluid?

The Department proposed that all oral fluid collection devices must meet the requirements being set forth in a new appendix B, which is consistent with OTETA's requirement that the specimen must be subdivided from the original specimen in the presence of the employee being tested. *See* 49 U.S.C. 45104(5) (aviation industry testing), 49 U.S.C. 20140(c)(5) (rail), 49 U.S.C. 31306(c)(5) (motor carrier), and 49 U.S.C. 5331(d)(5) (transit). Importantly, we noted not all the devices HHS would allow for the OFMG will be allowed for DOT-regulated collections under 49 CFR part 40 because many would not be consistent with OTETA.

Some commenters said DOT and HHS should not allow different devices. One commenter said HHS should only use devices meeting the needs of the DOT program. Another commenter said laboratories charge four dollars per oral fluid collection device, and since every collection would require two devices to create a split specimen, they thought DOT's proposal would save money by mandating a single device, even though it was a sub-dividable device.

Although we discussed the requirements of OTETA in the preamble to the NPRM, one commenter did not realize it was a statutory requirement, saying DOT did not have data to support using a single specimen collection device that gets subdivided. An industry association said it could not find the language in OTETA. One commenter said there was no need to subdivide the specimens, simply use a single collection device, as is done in non-DOT testing. A couple of commenters misunderstood OTETA's requirements and thought that a single specimen subdivided was a concept that DOT created separately from the statute. Several commenters suggested the mouth could be the collection container, thereby allowing separate specimens could be collected from different parts of the mouth to collect a subdivided specimen. Others said the Department did not understand OTETA's requirements and were thereby creating an obstacle that would delay oral fluid testing because the Food and Drug Administration (FDA) could take one to two years to approve new devices. Incidentally, some of these same commenters participated in the public comment period for proposed changes to the HHS OFMG and said it would not be a problem to change the devices and obtain FDA approval in under one year, even on an annual basis, if needed. (*See* 87 FR 20522, Apr. 7, 2022). That inconsistency was notable, when compared to the comments some of the same commenters filed to this docket.

When Congress passed OTETA in 1991, it designated DOT as the agency to interpret and carry out the requirements of the statute. The Secretary of Transportation, with certain delegations to the aviation, rail, motor carrier and transit administrations, was charged with continuing its existing drug testing regulations, but enhancements were articulated in OTETA. One of those enhancements was to require ''that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual.'' *Id.* The Senate Committee Report explained the testing programs were to include ''procedures designed to safeguard individual rights and testing procedures which shall . . . Provide that each specimen sample be subdivided, secured, and labeled in the presence of the tested individual . . .'' Senate Report: Omnibus Transportation Employee Testing Act of 1991, S. Rpt. 102–54, pp. 20–21 (May 2, 1991). In addition, the Senate Report explained, ''These safeguards are critical to the success of any testing program. They are designed to ensure that an individual's basic rights to privacy are protected and that there is accountability and accuracy of testing.'' *Id.*

Having a single specimen collected and subdivided in the presence of the tested individual is the core issue in the decisions we have made regarding what device features would be acceptable in the DOT oral fluid testing program. Congress clearly articulated collecting a single specimen that is subdivided in the presence of the tested individual is a critical safeguard for the individual and it provides assurance of the accountability and accuracy of the testing program. Furthermore, the safeguard of a single specimen subdivided in the presence of the individual being tested is a right OTETA ensured for individuals being tested. As we said in our 2000 preamble to the plain language rewrite of part 40, ''When Congress guarantees a right to employees (and we believe we must treat all DOT-regulated employees in our program alike, even if they are not covered by the Omnibus Act), our obligation as a Federal agency is to faithfully execute that legislative decision.'' (65 FR 79467 Dec. 19, 2000).

Requiring a device that permits a single specimen to be collected and subdivided in the presence of the donor is both a statutory requirement and a reasonable expectation. The Department is acting within its authority to carry out such reasonable and clear requirements in legislation entrusted to it.

Assuming in the alternative that the statute is not considered to be clear on its face, the DOT is the Federal agency charged by Congress to interpret OTETA and we are utilizing our ability to interpret the statutory authority vested in us. The precedent for this ability to interpret statutes has been supported for almost forty years in the cases following *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). In *Chevron,* the leading case on the authority of agencies to interpret statutes through rulemaking, the Supreme Court articulated the following standard:

> When a court reviews an agency's construction of the statute it administers, it is confronted with two questions. First, always, is the question of whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction of the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. (Id. at 842–43).

In applying the Chevron analysis, courts will strike down an agency regulation or interpretation when there is something in the statute specifically precluding the action the agency had taken. Actually, OTETA confirms the Department's broad authority to carry out its drug and alcohol testing responsibilities. When the intent of Congress is clear, as is the case here, no further inquiry is necessary.

Thus, the Department is acting within its statutory authority to carry out such reasonable requirements in legislation entrusted to it. The statute unambiguously provides that samples for drug testing must be subdivided, or ''split.'' To the extent that that the statute requires interpretation, the DOT's implementation of the statute is reasonable and is, therefore, entitled to deference. *See Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984).

Consequently, as we proposed, all devices meeting the requirements in Appendix B will allow a single specimen to be subdivided in the presence of the donor. For example, a device could allow two specimens to be collected simultaneously using a single collection device, which directs the oral fluid into two separate collection tubes; or a specimen could be collected with a single device, which is inserted into the mouth and can be subdivided into two separate collection tubes. We would also allow a device to have two pads joined together for the collection in the same part of the mouth, as long as they can be separated in the presence of the employee being tested. We do not agree with the creative suggestion of allowing the mouth to be the collection container.

We have made slight modifications to the proposed rule language in Appendix B to encompass this broader intention of what is acceptable under OTETA. We think it is reasonable to allow a device with either one or two pads that can be subdivided and sealed in the presence

of the employee to be consistent with OTETA.

One commenter who is a collector pointed out that there is already at least one patented device that would meet the requirements of OTETA. This commenter said she has experience using that device and it is far superior to others on the market. She noted problems with other oral fluid collection devices ''such as: inadequate specimen for multiple drug confirmations; sample-adequacy indicators are not reliable indicators of specimen volume as donors attempting to 'beat' the test often suck on the device to draw saliva out of the paddle or swab; absorbent material in paddles/swabs have no consistency in sample volume collected; there is no standardization of oral fluid collection devices that a offers a reproducible, sufficient (1 mL) sample . . .'' As manufacturers develop new devices capable of being subdivided in the presence of the donor, we expect that any such problematic issues with oral fluid collection devices will be resolved.

We have included below, in the Section-by-Section analysis of Appendix B, more comments regarding the specifics of what we proposed for collection device kits. A full discussion of the specific comments can be found there.

§ 40.61 What are the preliminary steps in the drug testing collection process?

We proposed changes to § 40.61(a) to remind C/TPAs for motor carrier owner/operators of the C/TPA's respective nondelegable duty to make a determination of whether a refusal has occurred when an employee fails to timely report for a test that is not for pre-employment. We received only supportive comments. We have adopted the changes and have added similar language to this section to remind employers of their duty to make a determination on refusals. We have added language in the final rule to reiterate the responsibility for the employer or C/TPA of the owner/operator to make the actual refusal determination required under §§ 40.191(a)(1) and 40.355(i) and (j).

There were no comments regarding modifying § 40.61(b)(1) and (3), to use the term ''drug testing'' or ''drug test'' in place of ''urine,'' since the provision applies to the testing of either specimen type. We have adopted these changes as proposed.

We proposed to split the existing § 40.61(b)(3) into (b)(3) and a revised (b)(4), and there were no comments. We have revised § 40.61(b)(3) to prohibit collection of any kind of specimen from an unconscious donor. The revision to § 40.61(b)(4) includes the remaining sentences of the current § 40.61(b)(3), with a change to the final sentence of proposed subparagraph § 40.61(b)(4). The final sentence in § 40.61(b)(4) emphasizes the actual employer must decide whether a given circumstance constitutes a refusal, as is required by § 40.355(i). When a directly observed test is needed, either a directly observed urine collection or oral fluid collection will suffice, and the collector will note on the CCF whether a directly observed urine or oral fluid test was conducted under § 40.61(f)(5)(i).

There was a comment to § 40.61(f)(5)(i). The commenter said the ''collector should have clear instructions on when the type of sample can be switched. Ideally the collector would get instruction from the DER, however the DER is rarely available when a problem collection arises.'' We agree that this instruction should come from the DER. That instruction should be provided in advance of the tests when possible. These are the kinds of details employers and collection sites should be discussing in their regular course of business. We disagree that it should be a regulatory requirement.

DOT-regulated entities are required to use HHS's OMB-approved CCF. DOT worked closely with HHS on the current CCF, which incorporated changes necessary as a result of HHS's establishment of scientific and technical guidelines for the inclusion of oral fluid specimens in the Mandatory Guidelines for Federal Workplace Drug Testing Programs. The majority of changes to the CCF were made to allow the collection of oral fluid specimens, which have not been authorized in the DOT drug testing until this final rule and will not be fully implemented until HHS certifies at least two laboratories.

In response to the HHS revisions to the CCF, we proposed changes to §§ 40.61(e) and 40.79(a)(1) (formerly § 40.73(a)(1)). The instructions for completing the old CCF were provided on the back of Copy 5 of that form. These instructions are not provided on the revised CCF. Instead, instructions for completing the form can be found on the HHS and DOT (ODAPC) websites. We proposed amending § 40.61(e) to instruct the collector to tell the employee they can find instructions for completing the CCF on specific HHS and DOT websites. We received the following comments to these changes.

Airlines for America (A4A) supported the amendment to require the collector to ''notify the employee that instructions for . . . the CCF can be found at the HHS . . . and DOT . . . websites.'' Quest Diagnostics suggested, ''a printed and legible copy of the instructions for completing the CCF should be available to both the donor and collector to follow as part of the collection process during all collections. Provision of a printed copy should be a collector's responsibility in the event electronic access is not available.'' While we agree with the spirit of this latter comment and would encourage collectors to have a legible copy of the CCF instructions available, we envision it as a good business practice and not a regulatory provision. To require paper copies of this to be provided to each donor seems to be an unnecessary paperwork burden to employers and their collection personnel. Having a laminated copy available at the collection site is also a good idea. As long as these directions are available electronically through the DOT and HHS websites, they will be available to all employees. We have finalized § 40.61(e) as proposed.

We received a comment from a labor organization asking for a new requirement to be added to § 40.61(b). Specifically, they asked us ''to add a requirement that for union represented employees to be informed by the collector that the employee being tested has the right to have a union representative present during the process.'' It is unlikely that collectors would know this information. We consider this comment outside the scope of this rulemaking, but it can be addressed in individual collective bargaining agreements between unions and their employers.

Also, we proposed amending redesignated § 40.79(a)(1) to note the employee must provide all information required in Step 5 of the revised CCF. This information includes the donor's printed name and signature, date of the collection, date of birth, daytime and evening phone numbers, and email address (if the donor has one they are willing to share).

One commenter asked that we not require the collector to make a remark on the CCF if the donor's email address, date of birth, or telephone numbers are not in Step 5 of the CCF. This commenter said requiring this notation as a remark on the CCF ''could have a catastrophic impact on the collection process, expose employers to privacy complaints, create unnecessary test cancelations, increase administrative costs, and add another point of potential conflict between the donor and collector.'' The commenter thought the requirement to provide two phone numbers and an email address would be a violation of the employee's privacy

rights. However, the commenter did not have an issue with providing the donor's name, SSN and date of birth.

We disagree that additional information on the CCF is a violation of the employee's privacy. If the information required in Step 5 of the CCF is not properly completed by the employee, the collector has a duty to attempt to get the employee to provide the information or note in the remarks section that this was not done. As with all problems at the collection site, it is best to document them as soon as possible.

One commenter, NDASA, asked about situations in which the employee does not have a second phone number. This commenter asked that we allow the collector to write ''Not applicable'' or some derivation of that phrase on the CCF, to note the absence of the second number was not available and not simply an oversight. That is a reasonable suggestion and common-sense approach. We have not included this in the regulatory text. Instead, we will include it in our collection guidance. We have finalized § 40.79(a)(1) as proposed.

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

We proposed to modify § 40.63(a) to remind collectors to ensure that all items in Step 1 of the CCF are completed. Specifically, we proposed to add a parenthetical to remind collectors to check the box for the DOT agency in Step 1.D, and to write an address for the actual collection site in Step 1.G.

Quest Diagnostics commented in support of ''the reminder to collectors to check the box for the DOT agency in Step 1.D, and to write an address for the actual collection site in Step 1.G.'' Similarly, industry trade associations supported the change. There were no opposing comments. We have adopted the changes as proposed.

§ 40.65 What does the collector check for when the employee presents a urine specimen?

We proposed to modify § 40.65 to ensure that when an immediate re-collection under direct observation is needed (*e.g.,* because the temperature of a urine specimen is out of range or there are signs of tampering), regardless of whether the first specimen was urine or oral fluid, the required directly observed collection could be either urine or oral fluid. For example, if a directly observed collection is needed after a urine collection, the second could be either an oral fluid collection (inherently directly observed) or a urine collection carried out under the direct observation procedures set forth in § 40.67. After the second collection is done, each specimen collected must be sent to the appropriate laboratory (*i.e.,* a laboratory certified by HHS for that specimen type). We asked for public comment about who should make the decision as to the methodology for the second collection.

ARCpoint Labs, a nationwide network of collection sites, commented that the collector should be the one ''to determine the type of second collection that is performed. This will allow maximum flexibility based on environment, oral/urine kits available for that client, and the collectors experience.'' This commenter also pointed out that moving from a urine collection to an oral fluid for the purpose of obtaining a directly observed collection would remove the need to conduct a more invasive urine direct observation.

Conversely, Labcorp, which is an HHS-certified laboratory and owner of a large network of collection sites, opposed ''allowing the collector to independently determine when an alternate specimen should be collected or requiring that the collector contact the employer each time an alternate specimen type is collected.'' Labcorp also said the identification of what specimen type is used and when it should be used should not be in the regulation and should be in the agreement between the employer and the collection site. A C/TPA requested that a ''collector should have clear instructions on when the type of sample can be switched.'' Similarly, the New York City Department of Transportation recommended advance communication between the DER and the service agent ''to ensure that an alternate methodology is authorized with devices and laboratories as designated. In the event an alternate methodology is needed, the collector should contact the employer (DER) and/or service agent (TPA/MRO) immediately. They will make the decision on which device to use.''

We agree there should be clear communication between the employer and their service agent(s) who conduct the collection to ensure there is a process set up in advance. That process would determine whether the collection would either continue with the same methodology as the collection began or switch to the alternate methodology to complete the second test (*e.g.,* under direct observation or to complete the test when there is a shy bladder scenario). As Labcorp noted, moving to oral fluid for a directly observed collection is less invasive than moving to a urine collection under direct observation.

When there is a need to determine whether an alternate specimen should be used, it is advisable for an employer to have a standing order in place to deal with such situations. The different specimen type could be chosen by the employer (through a standing order or a discussion with the collector) or its service agent (*i.e.,* if there is no standing order and the collector cannot contact the DER) to complete the collection process for the testing event.

As several commenters supported, this should all be discussed and arranged in advance. We do not believe this is something the Department should regulate. The employer and its service agents are in the best position to assess the costs and logistics of the collection, set up the appropriate contracts with collectors and laboratories, and determine the most effective way to conduct a second collection under direct observation. The proposed language sets up the performance standard for the second collection to be accomplished without interfering in these contractual relationships between employers and their service agents. Consequently, we have finalized the proposed language without further changes.

§ 40.67 When and how is a directly observed urine collection conducted?

We proposed to modify the title of the section to add the word ''urine''. This clarifies its applicability solely to how and when directly observed urine collections will occur. We received no comments on this point and have adopted the change to the title.

One commenter asked why we did not include permission for an employer to send an employee in for an immediate recollection if the employer discovered a direct observation should have been conducted but was not. The commenter pointed out the employer could do this only when the service agent noted this for the employer. We agree with this commenter and, as a logical outgrowth, we have added a § 40.67(a)(4) to permit this and to tie in the action expected of the employer when a service agent notifies the employer under § 40.67(n) that a required direct observation was not done.

We proposed minor changes to § 40.67(c) and (d). We received a public comment requesting an additional modification to the proposed § 40.67(d). That commenter asked for a language change to have the collector inform the employee a direct observation is

necessary because the specimen did not meet Federal guidelines. We will not make that change because we believe it will cause confusion between the HHS guidelines and DOT's regulation, part 40. We have finalized the changes to § 40.67(c) and (d).

In the most substantive proposed change to § 40.67, we offered an amendment to § 40.67(g) to address situations where a same gender observer is not available for the collection of urine specimens. We requested and received public comment on whether a licensed or certified medical professional legally authorized to take part in a medical examination in the jurisdiction where the collection takes place should be permitted to be opposite gender observers. We explained that we were proposing this option to reduce the circumstances in which an observed urine collection might be delayed for lack of a same-gender observer.

We received a significant number of comments on proposed § 40.67(g). Some commenters thought that it would be a good idea to allow certain specified medical professionals to be direct observers regardless of gender because a same-gender observer is not always present in a collection site, and others mentioned how transgender and nonbinary gender individuals pose a challenge for finding a same-gender observer.

The majority of commenters on this subject opposed the proposal. The opposing comments included concerns about sexual advances, stress to donors, and accusations of assault that would lead to liability for medical professional serving as the observer. Some commenters asked that we leave the same gender direct observation provision exactly as it is in § 40.67.

While we acknowledge the concerns of the commenters who opposed the proposal, we agree with the commenters who wanted to see some changes made to accommodate situations where a same-gender observer cannot be easily provided and in the less common situations of transgender and nonbinary gender individuals who will be subject to a direct observation collection. Oral fluid testing offers a completely appropriate solution for all of these scenarios because every oral fluid collection is a directly observed collection without the need for a same gender individual to perform that observation.

Consequently, we have not added the proposed provision to allow a different gender direct observer who is a medical professional. If a directly observed urine collection is required, the burden remains on the employer to provide the same-gender observer if the collection site cannot do so, or to permit an oral fluid test. The responsibility of ensuring the collection takes place has always been the employer's requirement. If the employer has a standing order that all directly observed collections will be conducted as oral fluid, then there is no need for the collector to call the DER. Otherwise, the collector will use the telephone number listed on the CCF where the DER can be reached at any time of the day or night the testing is being conducted. If a collector cannot find a same-gender observer, the collector needs to let the DER know that one must be immediately provided for the collection, unless an oral fluid standing order exists.

In the case where the employee identifies as transgender or nonbinary gender, the burden remains on the actual employer to ensure the direct observed collection will take place. We have added § 40.67(g)(3) to require that when a same gender collector cannot be found, unless the employer has a standing order to allow oral fluid testing in such situations, the collector must contact the DER and either conduct an oral fluid test because the collection site is able to do so or send the employee to a collection site acceptable to the employer for the oral fluid test. Even if an employer does not usually utilize oral fluid testing, that employer should have agreements or arrangements either directly, or through its C/TPA, for oral fluid testing to be used for directly observed collections of transgender or nonbinary employees. In the alternative, the employer could establish in-house collections for such situations. We encourage employers to arrange for oral fluid testing in advance, in order to plan for such contingencies.

We want to clarify that the collector does not enter the reason for the direct observation in the ''Remarks'' section of the CCF if the employer is sending the employee in for a required directly observed collection (*e.g.,* a return-to-duty test, a follow-up test, a test where the MRO has instructed the employer to send an employee in for a directly observed collection). The ''Remarks'' section would be used only when the collector moves to a directly observed collection and the employer did not know about it in advance (*e.g.,* temperature out-of-range, or signs of tampering). Thus, we have amended § 40.67(e)(2) to change a cross-reference to § 40.67(b) to become a cross-reference to § 40.67(c)(2) through (4). This is because § 40.67(e)(2) is an instruction to collectors to follow through with an entry on the ''Remarks'' line on a CCF when an event under § 40.67(c) takes place. This has nothing to do with § 40.67(b), so this cross-reference has been corrected. We also proposed to make a technical amendment to § 40.67(c)(1) to strike the reference to paragraph (b) because it is an incorrect reference. There were no comments opposing any of these edits to § 40.67, so we have adopted them, as proposed.

§ 40.69 How is a monitored urine collection conducted?

There were no comments on the proposed new introductory language in § 40.69(a) to emphasize a monitored collection will be conducted if the collector is using a multi-stall restroom and the collector cannot secure all sources of water and other substances that could be used for adulteration and substitution (§ 40.42(f)(2)(ii)). Also, there were no comments about the proposed edits to § 40.69(e) to update cross-references in part 40 that were renumbered. We have adopted these changes as proposed.

§ 40.71 How does the collector prepare the urine specimens?

The final rule makes a minor clarifying change, instructing the collector of a urine specimen to check both the boxes for ''urine'' and ''split specimen'' on the CCF. We received one comment, which requested we add the words ''after the collection'' for the purpose of reminding the collector to check the boxes under Step 2 after the collection takes place. We agree this would be helpful. We have adopted the change to § 40.71(b)(1), with this modification.

§§ 40.72–40.74—Collection Procedures for Oral Fluid Testing

These three new sections establish the collection procedures for oral fluid testing. They are consistent with the HHS OFMG (84 FR 57554, Oct. 25, 2019).

There were many substantive points discussed in the comments that were extremely helpful to the Department. Commenters in the medical field, collectors experienced in non-DOT collections, laboratories, associations, and others discussed practical tips, potential problems and other factors for us to consider. In response to those comments, we made the following changes explained below.

The American College of Occupational Medicine (ACOEM) questioned whether oral fluid collectors would be well-enough trained to determine whether a donor is ''cheeking'', which they said is ''a practice of hiding medication or

contraband in the mouth between the cheek and gums.'' This association, with a membership of very knowledgeable health care professionals, warned of ''substitute saliva (complete with the proper amount of albumin or immunoglobulin biomarker) which is far easier to conceal and maintain at body temp than 30 cc of urine'' and the rise of other products to cheat oral fluid testing. They also asked whether collectors would ''be trained to carefully examine the entire mouth, *i.e.,* using a dental mirror, to assure that the donor has not concealed an adulterant or substitute saliva sample in their mouth?'' ACOEM also encouraged us to include such instructions in our Oral Fluid Collection Guidelines to ''make sure that the proper initial inspection process of the oral cavity is included.''

To ensure proper training can be done, we must first ensure the regulatory text is clear and provides the necessary details. Consequently, we chose to address the substantive concerns about substituting and adulterating tests here, in § 40.72(a), instead of the collector training provisions of the regulation.

We agree with ACOEM about the potential for adulterating, substituting, or otherwise interfering with an oral fluid test exists, even though all oral fluid tests will be directly observed. The final rule requires the employee to open their mouth and allow the collector to fully inspect the oral cavity. The collector is required to check the oral cavity to ensure that it is free of any items that could impede or interfere with the collection of an oral fluid specimen. In § 40.72(a), we have provided the examples of ''candy, gum, food, or tobacco'', which is not an exclusive list because there could be more items that are inadvertently present in a donor's mouth. However, we also included in § 40.72(a) that the collector needs to be checking for anything that could be used to adulterate, substitute, or alter the specimen. As this commenter suggested, we will provide further guidance on inspecting the oral cavity within our oral fluid collection guidelines to remind collectors to conduct oral fluid testing in well-lit areas and recommend, as a best business practice, the collector have a flashlight available for oral cavity inspection.

In response to the concerns of ACOEM and other commenters, we have amended the proposed § 40.72(a)(1) and created a new § 40.72(a)(2). Specifically, we have added ''If the collector finds indication(s) of anything identified above, the collector will ask the employee to lift their tongue and/or separate their cheek from their gum to permit full inspection.'' Although we do not believe every oral cavity inspection will require the employee to lift their tongue and/or separate their check from their gum, we want to provide this as an option for the collector to utilize within their discretion. We also added a sentence to allow the employee to cleanse their hands if they need to touch their own mouth to allow further inspection by the collector.

On the specific subject of tobacco, one commenter asked how oral fluid testing ''interacts chemically with employees who will use tobacco products via dip, smoke or chew prior to testing and of course various mouth washes to cover up.'' The HHS looked at this specific subject when formulating its OFMG. See 84 FR 57565 (Oct.25, 2019). The dark brown juice resulting from some forms of tobacco use can cause discoloration that may interfere with initial testing. This is part of the reason why there is a wait period prior to collection, so the employee can clear their mouth of any material that might stain the collected oral fluid.

In § 40.72(a)(3), the Department continues to emphasize the actual employer must make the refusal determination after the collection site notes the circumstances in the Remarks section of the CCF and reports these to the DER. Determining whether a refusal has occurred is a non-delegable duty of the employer per § 40.355(i). The collector will provide information to the employer to reach a determination about whether a refusal has occurred.

We asked for public comment about whether the collector or the laboratory should check the expiration date on the device used. The comments, including laboratories, industry associations, C/TPAs and collectors were overwhelmingly in support of having the collector check the date and record it, as in the proposed language in § 40.72(d)(3). Many pointed out the collector could discard an expired device and proceed with a new device at the collection site, with no impact on the collection. Conversely, if the laboratory were responsible for checking the expiration date on the oral fluid collection device and the device were expired, then the test would need to be cancelled. Consequently, in this final rule, we have required the collector to check the expiration date on the device and document it on the CCF.

It is important to note the CCF is a document designed by HHS and is not customized to the DOT-regulated drug testing process. HHS allows two separate devices to be used to collect a primary and a secondary specimen. For the reasons set forth in the *Principle Policy* section regarding the requirements for a single specimen to be collected and subdivided in the presence of the donor, the collector will not use two separate devices. Consequently, we have added a new § 40.72(d)(5) to specify the collector must enter the expiration date of the device being used on the CCF line marked in Step 4 of the CCF.

We chose the option designated as ''Split Specimen Device Expiration Date'' instead of the option marked ''Primary/Single Specimen Device Expiration Date'' for entry of the DOT-regulated test's expiration date because part 40 does not allow the use of a ''primary'' collection device, meaning one of two collection devices, nor does it allow for a ''single specimen'' collection device because all devices must be capable of collecting a primary and split specimen. Consequently, to avoid confusion, we require the collector to enter the device expiration date only in the second option in Step 4 of the CCF because it is entitled, ''Split Specimen Device Expiration Date'' and all devices will collect a split and have a single expiration date.

Some commenters asked whether an expired collection device would be a fatal flaw. We had proposed that in § 40.199(b)(8). We have adopted that change, as proposed. We have also added a new § 40.199(b)(9) to create a fatal flaw when the collector fails to note the expiration date for the device in Step 4 of the CCF and the laboratory confirms that the device was expired.

A commenter suggested we include a new provision to allow corrective action when a collector checked the expiration date on the device but forgot to check the box in Step 2 of the CCF to indicate the device was not expired. The documentation to prove the collector checked the expiration date is the collector's notation in Step 4 of the CCF, where the collector will document the expiration date for the oral fluid collection device. Consequently, we agree with the spirit of the suggestion and have amended § 40.208 to add the situation where a collector has entered the collection device expiration and merely forgot to check the box in Step 2. We have also added language to address when the collector enters the expiration date in the wrong spot, as the ''Primary Specimen Expiration Date'', instead of entering the date as the ''Split Specimen Device Expiration Date'' in Step 4 of the CCF. By adding these points to § 40.208, we have made these omissions the basis for creating a memorandum for the record, but the absence of this corrective

documentation will not cause the cancellation of the test.

Commenters, including laboratories and oral fluid device manufactures, supported the provision in § 40.72(b) to have the employee rinse with 8 ounces of water, if something was in the mouth. Several of these commenters noted a rinse with 8 ounces of water for the purpose of clearing the mouth is consistent with current instructions and practices in non-DOT testing.

More than one commenter was hesitant to say consuming water would remedy a dry mouth responsible for an insufficient specimen volume. Quest Diagnostics said, ''the use of water may, but is unlikely, to have a material impact on the amount of oral fluid collected.''

The commenters were supportive of the 10-minute wait and offered comments to enhance the proposal. A4A suggested ''DOT provide a mechanism or guidance regarding the performance-based documentation of the 10-minute period so that collectors may demonstrate compliance with the wait time.'' Since § 40.72 requires the 10-minute wait occur in every collection, the Department will not require the collector to document this on the CCF. However, the commenter raises a fair point about addressing this in guidance. Consequently, in the ODAPC Oral Fluid Specimen Collection Guidelines, we will include more suggestions for best business practices for a collector to use to demonstrate their compliance.

A commenter asked whether the collector failing to give the employee water and wait 10 minutes in a ''dry mouth situation'' would be a ''fatal flaw.'' It would not be a fatal flaw because fatal flaws are laboratory issues. Similarly, in urine testing, we did not classify failure of a collector to make fluids available to an employee during the shy bladder process in § 40.193 as a ''fatal flaw'' in § 40.199.

Regarding proposed § 40.73, one commenter questioned what we meant by referring to conducting collections ''correctly''. We recognize there are differences among the various oral fluid collection kits on the market today and those that will be developed in the future. We expect all oral fluid specimen collectors to follow both the part 40 requirements for collections, as well as the manufacturer's instructions on how to collect the specimen. Each device will have its own instructions, and when we refer to conducting the collection ''correctly'' in this section, we mean using the oral fluid device in the manner described by its manufacturer. The oral fluid collection must be done under the observation of the collector. In addition, the employee must properly position the device. We have added a new § 40.73(c)(1) to reflect these requirements.

We received a comment from Quest Diagnostics regarding § 40.74. Specifically, this commenter ''agrees with the requirement for a minimum of 1 mL of neat saliva for both the ''A'' and ''B'' (split) specimens.'' In addition, after further consultations with HHS, we realized we had drafted this provision too narrowly. There may be scientifically valid and forensically defensible devices that HHS determines do not need a minimum measure of 1 mL of neat saliva. Therefore, we have added the following language to § 40.74(b), ''or an otherwise sufficient amount of oral fluid to permit an HHS-certified laboratory to analyze the specimen(s).'' With this additional language added, we have adopted the amended § 40.74.

As an overall concern, a commenter suggested we refer to the individual being tested as the ''donor'' and not the ''employee'' in §§ 40.72–40.74. To be consistent with the urine collection procedures, we will continue to refer to the individual being tested as the ''employee.''

Subpart F

We are reorganizing subpart F (§§ 40.81–40.97), which addresses drug testing laboratories, to create a logical progression of urine drug testing, oral fluid drug testing, and provisions common to both. This reorganization involves renumbering several provisions and, in some cases, adding language to specify where a provision applies only to urine drug testing. For example, the title of renumbered § 40.86 would be changed to read ''§ 40.86 What is urine validity testing, and are laboratories required to conduct it?'' We have made a technical amendment to the second footnote in the newly renumbered § 40.86.

As an outgrowth of the public comments, we have added new fatal flaws for the laboratories in § 40.83(c)(8) and (9). We have not included a requirement for the laboratories to enter the expiration date on the CCF, as the CCF currently indicates and as commenters objected to in response to the NPRM. Instead, the laboratory must reject a specimen if the collector used an expired device at the time of collection or the collector failed to enter the expiration date in Step 4 of the CCF, but only if the laboratory confirms the device was expired. This mirrors the fatal flaws added to § 40.199(b)(8) and (9). Importantly, it is not the Department's expectation that every laboratory must check every vial for an expiration date. Instead, the laboratory will check the vials only when the collector has not entered the expiration date on the CCF or has entered an expired date. In those hopefully infrequent instances, by checking the date on the vials and ensuring that the expiration date has not passed, the laboratory is saving the test and not declaring it a fatal flaw.

In addition, we asked for comment on decreasing the amount of time laboratories would be required to keep non-negative specimens from 1 year to 90 days, as required by § 40.84 (formerly § 40.99). We explained the change was intended to reduce storage burdens on laboratories. The proposed change would not have affected the 2-year record retention HHS requires for documentation supporting the laboratory's analysis of a non-negative specimen and it would not have changed a litigation hold placed upon the specimen and the paperwork.

We received many comments on this proposal, with the vast majority of those opposing the change. Several commenters in favor of the change said employees challenge the results within 90 days and those commenters recognized that the litigation hold would mean that the specimen would be retained for what is sometimes years. Others said that they appreciated the cost and logistical benefits of having laboratories retain the specimens for a shorter time but suggested 180 days instead of 90 days. Those commenters said the introduction of oral fluid collections will pose additional costs on the laboratories for housing two different kinds of specimens under different preservation methods, so a reduction in time was welcomed.

Those opposing the change cited many substantive arguments for why they thought reducing the time to 90 days would disadvantage employees who want to challenge their result. The most persuasive of the opposing comments noted how an employee who has a non-negative test result needs more time to understand the process and retain counsel who, in turn, would formally place a litigation hold upon the specimen.

We agree with the commenters that 90 days may be too short for the specimen retention where there is no litigation hold. Although we did not propose 180 days as the hold period, we acknowledge that it is a logical outgrowth of the comments. We could adopt that period of time. However, it would be more helpful if we had further insight from public comment on that specific point. Although multiple

commenters suggested 180 days would be better, we did not receive any rationale for the 180 days. Consequently, we have not made any change at this time to the one-year retention period for non-negative test result and have withdrawn the proposed language. In a future rulemaking, it is possible we may consider posing a 180-day retention period instead of a one-year period, but we would want full public comment on such a proposal.

The most notable new portions of subpart F are §§ 40.91–40.93, which cover cutoff concentrations and specimen validity testing (SVT) for oral fluid specimens. These three new sections are drawn from the HHS OFMG and are intended to be consistent with the HHS provisions. For information on the parallel HHS provisions and the HHS rationale for putting them into effect, see the OFMG (84 FR 57554).

One commenter questioned whether HHS had set the correct cutoffs to be as sensitive to the presence of the drugs for which we test as the urine cutoffs are sensitive. While this commenter acknowledged DOT must follow HHS for the science, including the cutoffs for screening and confirmation for oral fluid testing, the commenter was concerned about whether there could be a lack of equivalence between the urine and oral fluid test results and the ultimate fairness of any difference between the two methodologies.

OTETA requires the DOT to follow HHS on the science of drug testing, as the commenter noted, and we must defer to HHS for their scientific determinations. We consulted with HHS regarding this commenter's concerns and were told there were many variable factors that impact the ability to detect a person's drug use. Those factors include biological differences, route of administration, diet and, for urine, hydration status. In addition, whether someone is an occasional drug user or a chronic drug user will impact detection, regardless of methodology. For example, someone's body mass index (BMI) may impact their urine test results for marijuana because THC adheres to fat cells. So, someone with a lower BMI may be less likely to test positive on a urine test than someone with a higher BMI. We have always accepted the impact on drug testing of the various factors mentioned above. Similarly, we acknowledge these factors will impact both urine and oral fluid testing in the future. Since the DOT-regulated testing program is deterrence-based, we acknowledge our focus is on prevention. When an employee abstains from using drugs because they know they will be drug tested, the true result is a benefit to both the individual and to transportation safety. There may be some situations where urine testing may not detect the same drug use as oral fluid does, or vice versa. However, HHS has set the cutoffs for both methodologies to ensure accuracy and fairness. In this approach, HHS and DOT have made the decision to forfeit detecting every single possible positive test result in favor of ensuring accuracy and fairness to each employee tested. Far from a possible ''arbitrary and capricious'' approach suggested by the commenter, it is our carefully weighed decision to ensure accurate and fair testing.

Quest Diagnostics submitted a comment in support of the SVT provisions of §§ 40.92 and 40.93. This commenter agrees with allowing SVT, as long as DOT is consistent with HHS requirements and ''the specific analyte(s) or whether it is performed at all should be left to the discretion of the laboratory.''

In the text of § 40.97, several requirements for laboratories are specified to apply only to urine testing, as they have no application to oral fluid testing. We restated § 40.97 in its entirety, given the number of individual changes made for this purpose. We did not receive any comments opposing these editorial changes, which were not intended to modify the substance of the provisions in question. We have finalized those changes.

We proposed a new data element in § 40.97(c)(1)(i)(I) to require a laboratory to report the collection device expiration date in a laboratory results report for the MRO. An industry association and a major laboratory opposed the addition of this data element. We disagree with the commenters and have included this data element because it applies only in the circumstance where a laboratory wants to report negative results to an MRO in report format. If the laboratory chooses to use Copy 1 of the CCF, the collection device expiration date is included on the CCF and no additional data element is needed. If a laboratory chooses to issue a report for one or more negative results, then the data elements in § 40.97(c)(1) must be included.

An additional major laboratory wanted the collector and not the laboratory to check the expiration date, saying that having the laboratory check the expiration date would be another 20,000 hours of work for laboratories each year. We agree, as we stated in the preamble for § 40.72(d)(3), the collectors and not the laboratories will have that responsibility. However, we see two different issues on the expiration date, neither of which should generate 20,000 hours of laboratory staff time annually. The first issue is who will be responsible for checking the expiration date? This will be the collector per § 40.72(d)(3). The second issue on the expiration date is its importance as a data element, but only if the laboratory chooses to generate its own report to the MRO instead of reporting the result on Copy 1 of the CCF. An expired device could be the grounds for a fatal flaw, but if the laboratory sends a report instead of sending the MRO Copy 1 of the CCF, on which the collector has already provided the expiration date of the device, the MRO would not know about the fatal flaw. Thus, if the laboratory wants to generate a report instead of using Copy 1 of the CCF, then the expiration date needs to be included to ensure the MRO gets the same data as if Copy 1 of the CCF were transmitted by the laboratory. Since the report is optional for laboratories, they could choose to revert to Copy 1 of the CCF for reporting each negative result to the MROs with no burden at all.

In § 40.111, we proposed to add language to paragraphs (a) and (d) to clarify that in their statistical reports to employers and DOT, laboratories need to submit reports to employers for the specimens for which the laboratory tests. Also, we proposed language in § 40.111 to state a laboratory withdrawing from National Laboratory Certification Program (NLCP) certification is required to file with both employers and the DOT an aggregate statistical summary for the last semi-annual reporting period in which it conducted DOT-regulated testing. This data is important to the Department because it helps DOT identify trends regarding non-negative results (*e.g.,* positives, adulterated, substituted and invalid) and cancelled tests. We received one supportive comment regarding these changes and have adopted them as proposed.

Subpart G—Medical Review Officers

With the addition of oral fluid testing, for the most part, MROs would continue to do their work as they have done under the current regulation. Conferring with laboratories, verifying test results by interviewing donors, and the other aspects of the MROs remain the same because this final rule adds an additional methodology, but does not change the basics of the MRO's role. We asked for public comment on whether existing and/or new MROs should receive additional training specifically with respect to their role in oral fluid testing and, if so, what subjects should such training cover. While we agree it

is important for MROs to learn about the science of oral fluid drug testing, the commenters said this is already covered in MRO training.

Several very experienced MROs and practices weighed in on this subject. One large MRO practice did not want to see additional training, but the other commenters did. An active MRO and MRO trainer said, ''Yes training is needed, especially in light of detection windows, cutoffs and collection processes.'' Corporate Medical Services commented, ''MRO training should be enhanced to include Oral Fluid Specimen information during initial training and recertification training, but that the training should not be required prior to reviewing oral specimen for MROs who are currently certified.'' The American Association of Medical Review Officers (AAMRO) said they already instruct on non-DOT oral fluid testing in their online training and their current materials follow the HHS final rule on oral fluid testing. They intend to incorporate any requirements of this DOT final rule. AAMRO said, ''key areas of concentration will be on managing 'shy mouth' and understanding the factors that can result between conflicting urine and oral fluid confirmed results.'' Vault Health Workforce Screening, another MRO practice wants to see oral fluid testing addressed in MRO training and certification. This commenter also noted ''[t]he MRO is required to subscribe to ODAPC's list serve. Through this they are notified of the new regulation once finalized. This would provide them the information on the collection and laboratory process that additional training prior to their re-certification should not be needed.'' We appreciate that perspective on the usefulness of the ODAPC list serve.

Additional commenters on this subject included SAPAA and Quest Diagnostics, who both said there should be additional training required for MROs to include the following, ''differences in laboratory procedures (*e.g.,* cut-off levels) between urine and oral fluid testing, the differences between the detection of parent drugs vs. metabolites where urine and oral fluid differ, differences in windows of detection, and any additional requirements for the interpretation and reporting of codeine and morphine positive results in oral fluid testing.'' Quest Diagnostics urged the Department to require MRO training, echoing the SAPAA comment and adding ''While it would not be practical to immediately augment the training of all MROs, the recognized certification and/or training entities should consider making available oral fluid modules to augment the training of currently certified MROs without having to wait for the next recertification cycle.''

We agree with the commenters who said MROs should be trained on the various aspects of oral fluid testing. We particularly like the approach of suggesting the MRO training organizations offer oral fluid modules to augment the training of MROs who are already current on their training certification requirements. As Vault Health Workforce Screening noted, the MROs will be notified through the ODAPC list serve, and mandatory training for MROs is not needed before their next certification date.

We only proposed to modify a few MRO provisions in subpart G. Specifically, in § 40.121, we have deleted the word ''urine'' from subparagraph (c)(1)(i) because future training for MROs should also include familiarization with oral fluid testing. By removing the word ''urine'' from § 40.121(c)(1)(i), we have opened the section on MRO qualification training to include oral fluid matters. We will not require MROs to undergo recertification training, but strongly suggest MROs seek supplemental information about oral fluid testing by the time HHS certifies at least two laboratories to conduct oral fluid testing.

In § 40.127, concerning MRO reviews of negative results, we proposed specifying that MROs need not review more than 500 negative results ''of all specimen types combined'' in any quarter. This is to clarify that, by adding oral fluid testing to the regulation, we do not intend to increase MROs' negative test result review requirements. We received only supportive comments on this proposal and have included it in this final rule.

In § 40.129(d), we proposed deleting ''drug test report'' and adding the word ''result'' following ''invalid test.'' In § 40.135(d), we proposed deleting the word ''test'' and adding the word ''result.'' This would keep the language of that paragraph internally consistent and consistent with the definition of the term ''invalid result'' in § 40.3. In § 40.139(b), we proposed to add the cutoffs for oral fluid laboratory-confirmed results. This is important because there are different cutoffs for the MRO to consider when the specimen is oral fluid versus urine. These cutoffs trigger a clinical examination for the use of the naturally occurring opiates, codeine and morphine. In addition, in § 40.139(c), we proposed to delete a reference to ''urine,'' since the provision would apply to all DOT drug tests. We received no comments on these changes and have adopted them as proposed.

We proposed a change to the MRO's responsibilities regarding contacting the pharmacy to verify the authenticity of a prescription in accordance with § 40.141(b). For more than twenty years, MROs have been required to personally contact pharmacies to verify a prescription that an employee has cited as a potential legitimate medical explanation for a laboratory-confirmed positive test. We proposed to allow MRO staff to make these inquiries. This would increase efficiency, lower costs, and assist MRO office workflow. No part of the MRO's verification interview of the donor would be changed, only the subsequent checking with the pharmacy to authenticate the prescription. The proposal only addressed the communication between the MRO's staff and the pharmacy to ensure that the prescription the donor provided is or is not authentic.

We received several comments in support of this proposal to change § 40.141(b). Most of the commenters agreed that this would increase efficiency and decrease costs because MRO time would not be spent waiting to speak with pharmacists. One MRO practice characterized calling the pharmacy as ''an administrative task to 'confirm' the information that was presented to the MRO during the interview.'' AAMRO suggested the MRO provide their staff ''with an outline or script and form for documentation. It would also be a good idea for the MRO to monitor a number of these calls to assure the staff call is appropriate.'' ACOEM was unsure this change would be effective because pharmacists are already hesitant to speak with the MROs, who are actual physicians. If a pharmacist does not want to speak with the MRO, they would be less likely to speak with staff. Instead, this commenter wanted the Department to instruct pharmacies that HIPAA does not apply, and they must communicate with the MRO.

We agree with the suggestion that MROs should conduct some oversight of their staff by providing instructions on what to say and occasionally monitoring some of these staff calls. We have added language to § 40.141(b) to set a performance standard for MROs to ensure oversight and quality control measures. While HIPAA does not apply to MROs, who are functioning in DOT-regulated drug testing, a search and seizure process under the Fourth Amendment to the U.S. Constitution, pharmacists are functioning under HIPAA because they are providing healthcare services, often covered by

insurance. Thus, we cannot direct pharmacists to comply. However, as always, under § 40.137(c), the burden of proof is on the employee to establish a legitimate medical explanation. If the pharmacist will not speak with the MRO or the MRO staff, then the MRO practice needs to let the donor know to authorize the pharmacist to communicate the information needed to verify the authenticity of the prescription. If the donor does not do this, then the MRO must report the verified non-negative result because the MRO could not authenticate the prescription, thus the donor did not provide a legitimate medical explanation that could be authenticated per § 40.137(c). Of course, the MRO has the discretion to reopen the verification within 60 days, if the employee is able to provide them access to the pharmacy. After 60 days, the MRO must continue to notify ODAPC before reopening the verification.

We have adopted two clarifying changes to § 40.145 on which we received no comments. In § 40.145(g)(3), we have deleted the word ''urine'' and substituted ''drug,'' since in this context we apply the requirement to test in an HHS-certified laboratory to any such test, whether urine or oral fluid. In § 40.145(h), have added the word ''urine'' after ''substituted''.

In § 40.151(a), we proposed clarifying the language to direct MROs not to accept the result of any drug test not collected and tested under part 40 procedures. If an employee goes to their own doctor the next day and requests a drug test, the MRO must not consider the results of that non-DOT test. We also proposed to delete language referring to DNA tests since use of those tests is prohibited elsewhere in the regulation (*see* §§ 40.153(e) and 40.331(f)). In § 40.151(b), we proposed to change ''urine'' container to ''collection'' container in recognition of the advent of oral fluid testing. In § 40.151(g), we proposed to delete the reference to ''MDEA'', since it was removed in a previous rulemaking (82 FR 52229 (Nov. 13, 2017)), after HHS deleted MDEA from the drug testing panel. MDEA is a Schedule I drug in the amphetamines class and was previously a required confirmatory test analyte before HHS removed it from the HHS Mandatory Guidelines.

In § 40.151(i), we proposed a technical amendment to replace the wording ''with no detectable creatinine'' with ''when the creatinine level is below the laboratory's limit of detection.'' This would ensure consistency with the requirement for laboratories to provide a numerical value for a substituted result (*see* § 40.97(e)(2)). Also, it is our understanding that all HHS-certified laboratories must have an established limit of detection for creatinine of 1mg/dL or less. Thus, when a laboratory reports a creatinine concentration level at less than its limit of detection, MROs can be assured it falls below the creatinine concentration of 2mg/dL for a substituted specimen and an individual cannot physiologically produce such a urine specimen.

We received only one comment regarding our proposed changes to § 40.151. SAPAA said it ''appreciates the clarification language as it will allow the MRO to point to a clearer explanation in the regulations when they receive donor objections.'' With this supportive comment and no others, we adopted all proposed changes to § 40.151.

In § 40.159(a)(1) we proposed to correct the reference to § 40.96(c) to become § 40.96(b) and we proposed adding a new sentence to § 40.159(a)(5)(ii), which would require re-collection when an invalid test is cancelled. The added sentence would direct that an alternate specimen be collected if practicable (*e.g.,* oral fluid, if the specimen was urine). This could result in a more efficient process and reduce the likelihood of multiple invalid specimens resulting from use of the same specimen type.

We received a comment from a C/TPA and MRO practice regarding § 40.159(a)(5)(ii), in which they said, ''We agree with the concept of changing specimen methodology if possible, but feel that it is the employer's decision to do so.'' An industry association specifically supported the new sentence in § 40.159(a)(5)(ii), ''which would require recollection when an invalid test is canceled. However, clarification that the proposed addition applies only to results canceled without a valid medical explanation or where a negative result is required is needed.'' Since § 40.159(a)(5) already makes this clarification, no further rule language is needed and we have adopted it as proposed.

In § 40.163(c)(2), we proposed a small change, substituting ''employee'' for ''donor.'' In § 40.163(e), we also proposed minor wording changes to clarify what records the MRO needs to retain after having reported a result and to clarify that when completing Copy 2 of the CCF, either the MRO must sign and date it (for both negatives and non-negatives) or MRO staff must stamp and date it (for negatives only).

A C/TPA and MRO practice specifically agreed with the changes to § 40.163(e) saying, ''We agree with stressing that the MRO needs to sign and date the CCF copy 2 for non-negative results. The MRO staff may stamp negative test results. All tests must have signed/stamped MRO copy.''

We have adopted the changes to § 40.163 as proposed.

Subpart H, Split Specimen Tests

We proposed a change to § 40.177 to add a reference to the sections pertaining to oral fluid testing. In § 40.179, we proposed to change referenced section numbers in accordance with renumbering and new oral fluid provisions elsewhere in the regulations. In § 40.181, we proposed changing referenced section numbers in accordance with renumbering and new oral fluid provisions elsewhere in the regulations. Another change to § 40.181 is to refer only to urine testing, since the creatinine and specific gravity apply only to urine testing. In § 40.187, we proposed to change references to Appendix D to Appendix F in accordance with the redesignations. We received no substantive comments regarding these changes and have adopted them, as proposed.

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

The Department proposed edits to § 40.191(a) to add what can constitute a refusal in an oral fluid collection to part 40's existing refusals provisions. The revisions included wording changes to take oral fluid testing into account (*e.g.,* in paragraph (a)(8)), ''fail to permit an inspection of the employee's oral cavity, or fail to remove objects from his or her mouth''), as well as specifying situations that are applicable only to urine testing (*e.g.,* in paragraph (a)(9)), ''fail to comply with an instruction to permit inspection to allow the observer to determine whether there is a prosthetic device in use'').

Like the pre-employment urine and alcohol collection processes, the oral fluid pre-employment collection process generally would not begin until the device is unwrapped. If an employee does not appear for a pre-employment drug test or leaves the collection site before receiving or unwrapping the device, this is not a refusal under § 40.191(a)(1) and (2). However, as in urine testing, certain blatant conduct by the employee at the collection site could constitute a refusal before the collection device is chosen under § 40.191(a)(8). For example, if an employee arriving for a pre-employment test engages in

disruptive or combative conduct at the collection site, a collector could report a refusal event to the employer for determination under § 40.191(a)(8). Also, if the employee shows they are possessing or wearing a prosthetic or other device that could be used to interfere with the collection process, and this becomes evident before the specimen container is unwrapped, a collector could report a refusal event to the employer for determination under § 40.191(a)(10).

Importantly, when an employee is undergoing a pre-employment test and the collector switches to an alternate device, it is considered a continuation of the original collection and is not subject to the pre-employment exception for leaving the collection site before the second device is opened. For example, if a collector begins with one specimen methodology (*e.g.,* urine) and switches to oral fluid (*e.g.,* because the employee was unable to provide a sufficient specimen), the employee must not leave the collection site without refusal consequences.

In addition, we would like to remind employers that, under the existing § 40.23(g), if they receive a cancelled test result on a pre-employment test, the employer must direct the employee to provide another specimen immediately. This second specimen collection is a continuation of the original pre-employment test. This means, as we said in our 2001 final rule on refusals, ''once the collection has commenced, the donor has committed to the process and must complete it.'' 66 FR 41948 (Aug. 9, 2001). As such, the employee must take the second pre-employment test and does not have the ability to decide not to continue this pre-employment testing requirement. In our 2003 final rule on the Drug and Alcohol Management Information System (MIS), we referred to the second test as ''the subsequent collection'' and we reminded employers to report only one pre-employment test result (68 FR 43950, Jul. 25, 2003). Accordingly, the employer would count the second test result as the result of record for this pre-employment test on the DOT's MIS form.

We have revised drug testing refusals § 40.191(d) and added a new § 40.261(c)(1) to alcohol testing refusals to clarify an often-misunderstood point about who has the authority to determine if conduct at the collection site constitutes a refusal to test. Employers often automatically treat as a refusal any situation in which the collection site notes a refusal in the remarks section of the CCF. This is not correct. The new § 40.191(d) emphasizes the role of the collector in a refusal is to notify the employer about the circumstances the collector believes constitute a refusal, but the employer must decide whether a refusal occurred. The new § 40.261(c)(1) specifically spells out the respective responsibilities of the alcohol testing service agent(s) in reporting and the DER in making decisions about whether a situation during an alcohol test constitutes a refusal to test.

Under the long-existing § 40.355(i), making collection site refusal decisions is a ''non-delegable'' duty of the actual employer. Service agents, such as collectors, BATs or STTs, are not and never have been authorized to make this decision. The service agent's role is to provide information to the employer concerning the circumstances of the event. Then the employer, who must make the ultimate decision should, as a matter of responsible decision-making, contact the collector or BAT to gather information and consider anything the employee brings to the employer's attention. Taking the entirety of the circumstances into account, the employer should then make the decision about whether a refusal occurred. The employer also has the discretion to consider information from the employee to determine if the evidence satisfactorily excuses the employee's conduct. For FMCSA-regulated owner-operators, C/TPAs stand in the shoes of those employers for the purposes of determining whether the individual refused a test (§ 382.705(b)(6)).

In this final rule, we emphasize the already existing employer's role in making determinations about collection site and other non-MRO-determined refusals (*e.g.,* failure to appear for a test, failure to take an additional test, etc.). We think it bears repeating that refusals are violations that cannot be overturned in a decision about personnel actions. An arbitration, grievance, State court or other non-Federal forum cannot overturn the employer's determination of a refusal on a DOT-regulated test. When a case proceeds to one of those forums, it is because the employee wants an adverse personnel action reversed. None of those forums has jurisdiction over DOT-regulated Federal drug or alcohol testing, the determination of a refusal under part 40, or the regulatory consequences that exist to ensure transportation safety is served. In the part 40 final rule from December 2000, (65 FR 79470–71), we said, as has been true from the beginning, all the Department requires is that an employee who violates the rule not perform safety-sensitive functions until and unless he or she successfully completes the return-to-duty process. Decisions about discipline and termination are left to the discretion of the employer or labor-management negotiations. Where employer policy, or labor-management negotiations, have delegated personnel decisions of this kind to an arbitrator, the Department intends that the arbitrator's decision determines the personnel action that the employer takes. The Supreme Court has affirmed these principles. *Eastern Associated Coal Corporation* v. *United Mine Workers of America, District 17, et al.,* 531 U.S. 57 (2000). Of course, an arbitrator cannot order an employer to return an employee to the performance of safety-sensitive functions until the employee has successfully completed the return-to duty process. Nor can an arbitrator or an employer change the laboratory's findings about a specimen or an MRO's decision about whether there is a legitimate medical explanation for a test result.

Therefore, we have added a second sentence to §§ 40.191(c) and 40.261(b), to remind the employee and employer that the consequences specified under DOT agency regulations for a violation cannot be overturned or set aside by an arbitration, grievance or State court tasked with adjudicating the personnel decisions the employer decides to take against the employee. As we said in the December 2000 preamble, the employee must successfully complete the federally required return-to-duty process regardless of what the decision is on the personnel action. This ensures safety is not compromised. Importantly, a refusal is a willful violation of the Department's drug and alcohol safety regulations and is completely separate and apart from employment decisions the employer makes.

Some commenters asked for examples of what would not be grounds for an employer to determine a refusal. Of course, the universe of examples is too vast to capture. However, here are a few examples that are not meant to be exhaustive, they are only a tiny fraction of what is possible. Example 1: An employee provides an insufficient quantity of urine, begins the ''shy bladder'' process, but the process is cut short because the collection site sent the employee away because they were closing before the employee had three hours to produce a sufficient urine specimen per § 40.193(b)(2). If the collection site nevertheless reports this to the employer as a refusal, the employer could determine there was no possibility the employee could have completed the test, and therefore could conclude there was no refusal. Example

2: When an employee leaves a collection site due to a documented family medical emergency, the employer could determine the employee's departure from the collection site did not constitute a refusal. Example 3: If an employer sends an employee to report for a DOT-regulated test, but the collection site is closed or is about to close and sends the employee away, the employer would take this into consideration in determining that a refusal did not occur. Example 4: If an employer requests an applicant take a pre-employment test, and the employee does not show for the test, this is not a refusal under part 40 and the employer would appropriately not consider this to be a refusal to test. In all of the examples above, an employer would not report a ''refusal'' in response to a records request made by a prospective employer under § 40.25. Similarly, an FMCSA-regulated employer would not report a ''refusal'' to the Clearinghouse.

If the employer determines that a refusal did not occur, the employer would treat the test as an administratively closed non-event. The employer would not ''cancel'' the test and would not enter it on the MIS report required by DOT. For random, post-accident and reasonable cause/suspicion tests administratively closed as a non-event by the employer, no further action is required, and the employee would not be sent back in for another test. For those testing events that require a ''negative'' test result (*e.g.,* return-to-duty, follow-up, pre-employment), the employer would send the employee back for another collection. In all cases, the employer should document the event and the evidence relied upon to explain why the employer concluded a refusal did not occur.

The Aircraft Owners and Pilots Association (AOPA) said it ''supports the change to § 40.191 that clarifies the employer does not need to automatically treat as a refusal any situation in which the collection site notes a refusal in the remarks section.'' AOPA also asked for clarification in the regulation to indicate ''what the testing center must explain to an individual.''

For decades, it has been a requirement of Federal law, per §§ 40.191(a)(2) and 40.261(a)(2), for an employee to ''remain at the testing site until the testing process is complete.'' With this explicit statement of the requirement to remain at the testing site, we have never put additional requirements on the collector to explain to the employee what the employee's legal requirements are. ODAPC has provided guidance stating the following: ''There is no requirement for a collector to inform an employee that the failure to remain at the collection site is a refusal. Therefore, if the collector does not inform an employee that failure to remain at the collection site is a refusal, it does not mean that the collector has given the employee permission to leave the collection site. If an employee leaves prior to the completion of the testing process, the employer must decide whether the employee's actions constitute a refusal.'' *https://www.transportation.gov/sites/dot.gov/files/docs/resources/partners/drug-and-alcohol-testing/323471/july-2014-part-40-questions-and-answers.pdf.* In response to AOPA's comment for clarification, we have added the following to § 40.191(a)(2) and (3), ''The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal.'' For consistency and as a logical outgrowth of the comment, we have also amended § 40.261(a)(2) and (3) to add the same language.

Two commenters asked for specificity about § 40.191(a)(2) because it deems one ground for determining a refusal is an employee's failure to remain at a ''testing site'' until the process is complete. One commenter noted part 40 does not state ''what constitutes a 'testing site' for this purpose. Is it the waiting room? Is it the building? Is it the building and grounds?'' Another commenter asked for more explanation from the Department about whether it would be a refusal for an employee to step out of a waiting room or to leave a building during a collection.

Since part 40 covers the regulated industries of aviation, motor carriers, transit, railroads, pipelines and is applied to the maritime industry, it would be nearly impossible to define what a ''testing site'' is for every industry and in every circumstance. It could be the clinic in a major airline's hub, the area around a portable toilet in an oil field, an occupational health clinic offering drug tests, or somewhat of an improvised collection site near the scene of an accident. In recognition of the differences among and between these transportation industry employers and the testing sites they and their contractors use, we will continue to defer to the respective employers to make the determination about what is reasonable to construe as the ''testing site'' in a particular circumstance, as they determine whether or not their employee's behavior constituted a failure to remain at that testing site.

One commenter opposed the changes to §§ 40.191(d)(1) and 40.261(c), saying collectors should be the ones to determine whether or not a collection site refusal has occurred. This commenter said most employers ''do not know what to do when the collector informs them that there was an attempt to tamper during the collection. The only witness to the tampering is often only the collector.'' Conversely, another commenter who is a seasoned collector and collector trainer said, ''Thank you for clarifying that collectors do not have the authority to make these. I appreciate the two very common and distressing examples (collection site closing, family emergency for employee) and the clarification that employers have discretion in these cases.''

Several commenters were pleased with the additional clarity we proposed to add to §§ 40.191(d)(1) and 40.261(c) to remind employers that making collection site refusal decisions continues to be their ''non-delegable'' duty. Quest Diagnostics, which includes multiple HHS-certified laboratories and more than a thousand collection sites in the United States, said it ''appreciates the clarification that it is only the employer who can make the determination that a donor refused to take a DOT drug test. While a collector can inform the donor that an employer may view the donor's action as a refusal to test, that decision rests with the employer.''

One commenter noted the importance of the employer making ''the determination regarding a test refusal after seeking comments from the collectors involved in the process.'' Other supportive commenters requested we go further and not say ''the collector could report a refusal to the employer for determination . . .'' A collector training company said this language ''implies that the collector has the ability to make the determination. They suggest better language would be: ''note the actions that may constitute a refusal on the Remarks line . . .' [and they want] ''more directive language'' for employers who must make refusal determinations. Several commenters asked us to amend this proposed rule text ''to be clear the collector will 'notify' an employer of the employee's actions'', so the employer will make the determination of whether or not a refusal has occurred. One commenter asked for more directive language for employers who must make refusal determinations.

In response to the comments, we have amended §§ 40.191(d)(1) and 40.261(c)

to include the language some requested to more clearly indicate that collectors do not determine refusals. Both sections now state, ''As the collector, you must note the actions that may constitute a refusal in the 'Remarks' line (Step 2), and sign and date the . . . [CCF for drug testing or ATF for alcohol testing].'' We think we have been sufficiently directive to employers in adding the following to §§ 40.191(d)(1) and 40.261(c)(2): ''the employer has the sole responsibility to decide whether a refusal occurred.''

More than one commenter asked for guidance on how a collection site should handle an employee who is sent back to the collection site after the employer determines that a refusal did not occur. Because every collector is different and every employee is different, this would be difficult for the Department to include in guidance. What collection site(s) an employer uses would be up to the employer. If another collection site is available for the subsequent collection, the employer might want to choose this collection site for the second collection.

Another commenter asked for advice about ''What actions by the donor prior to selecting the collection device constitutes a refusal in a Pre-employment setting? Which do not?'' The preamble to the final rule establishing exceptions for refusal determinations when a donor leaves a collection site in pre-employment tests merits reiterating. It stated that i]n the pre-employment test context, there can be situations in which an employee could legitimately leave a collection site before the test actually commences (*e.g.,* there is a long wait for the test and the employee has another obligation). By the commencement of the test, we mean the actions listed in § 40.63(c), in which the collector or employee selects a collection container. Once the collection has commenced, the donor has committed to the process, and must complete it. If the employee then leaves before the process is complete, or takes another action listed in this section as a refusal, the consequences of a refusal attach. However, if the employee leaves the site before the test commences, then the employee is in the same situation as someone who does not appear at all for the pre-employment test. The consequences of a refusal do not attach in this situation (§ 40.191(a)(2) and (3)). 68 FR 41948 (Aug. 9, 2001).

However, in a pre-employment situation there could be a refusal to test prior to selecting a collection container. In § 40.191(a)(8) and (10), there are no exceptions for pre-employment tests. These sections address conduct at the collection site that is disruptive or that involves bringing in substituting or adulterating products. Consequently, there could be refusals reported to an employer for a pre-employment applicant. Here are some specific examples, although not an exhaustive list: refusing to empty one's pockets; refusing to wash one's hands; acting disruptively at the collection site; threatening or attempting to bribe collection site personnel; bringing to a collection site a bag of urine or any device that could be used to substitute or adulterate a urine specimen.

§ 40.193 What happens when an employee does not provide a sufficient amount of specimen for a drug test?

We proposed the addition of oral fluid testing to paragraph (a), adding insufficient specimen provisions for oral fluid testing, parallel to the existing insufficient urine specimen procedures. Due to the differences between the two types of specimen collections, the oral fluid insufficient specimen collection procedure is shorter in duration than the insufficient urine specimen collection procedure (*e.g.,* in an oral fluid collection, there is no need for a three-hour wait period). In paragraph (e), we proposed adding examples of conditions that might succeed as medical explanations of providing an insufficient quantity of oral fluid (*e.g.,* autoimmune diseases), as well as examples that would not constitute a valid medical explanation (*e.g.,* unsupported assertions of dehydration). Although one commenter opposed listing any examples of conditions that could be legitimate medical explanations because MROs should be able to ascertain legitimate conditions, we have kept the examples as proposed. In addition, another commenter said MROs are not qualified to assess the legitimacy of shy bladders or dry mouth, but we disagree and will continue to have MROs, who are fully qualified physicians, assess the legitimacy of the conditions underlying an individual's inability to provide a sufficient specimen under any approved testing methodology.

With an alternate specimen methodology now available, an employer may authorize a collector to use a different type of specimen collection process in an insufficient quantity case. If a urine specimen is insufficient, the collector could follow up with an oral fluid collection, or vice-versa. In a case involving an insufficient urine specimen, following the insufficient urine specimen procedures would become unnecessary since an oral fluid collection would be performed. We asked for public comment on these changes and whether allowing a donor to rinse with up to 8 ounces of water is an appropriate amount of fluid for rinsing for the purposes of both §§ 40.72(b) and 40.193(b)(2). We also asked for comment about the questions of who would decide what methodology to use after an insufficient specimen occurs, and when and how such a decision would be made. Since so many oral fluid tests occur each year in non-DOT testing, we were eager to learn from those with experience on what we should know.

We received robust public comment on the above-mentioned subjects and have discussed these in detail in the *Principle Policy* section of this final rule. As explained in the *Principle Policy* section, the Department will not mandate the use of the same or the alternate testing methodology for an insufficient urine specimen (''shy bladder'') or an insufficient oral fluid specimen (''dry mouth''). While not required, it would be prudent for an employer to offer more than one methodology to address such scenarios.

The Department agrees there are several advantages to switching from a urine collection to an oral fluid collection when an employee has presented an insufficient specimen. For example, once an employee provides an insufficient urine specimen, they would have up to three hours to provide a sufficient specimen (during which time the employee should be monitored). If at the end of the three-hour period, the employee still did not provide a sufficient specimen, the employee is required to prove (via a medical evaluation by a referral physician) they have a medical condition to explain their inability to provide a sufficient specimen.

We also acknowledge the commenters' concerns that shy bladder situations merit attention, as we have articulated in our discussion of § 40.193 below. Employers have legal obligations separate and apart from part 40 for providing reasonable accommodations for employees with disabilities. If an individual has a condition rendering that person unable to produce urine falling within the parameters of a disability, this should not be considered to be an effort to evade a test.

Whether the reason for failing to provide a sufficient specimen is substantiated by a medical condition or not, there is a cost (*e.g.,* lost work) to the employer for having the employee wait for up to three hours. Similarly, there is a cost for the medical evaluation which, in most instances, is at the employee's expense. The availability of oral fluid

drug testing means the costs associated with the three-hour wait and the medical evaluation could be avoided while still affording the employee the opportunity to provide a specimen.

Some commenters opposed allowing an insufficient urine collection to go to an oral fluid collection. These commenters were concerned employees who had used drugs several days before the test would withhold their urine in the hopes of having an oral fluid with a shorter window of detection. Some commenters wanted the decision of whether to proceed with another urine collection or to change to an oral fluid collection left to the discretion of the collector after the initial insufficient urine specimen. Since the collector could assess the facts at the collection site, the collector would be the better judge of the best method of testing to deploy.

The majority of the commenters supported the option of changing to a different collection methodology if the employee demonstrates (at the onset) that she or he cannot provide a sufficient specimen. For the reasons outlined above, the Department agrees with those commenters in theory, but we have not mandated that change in drug testing methodologies.

For employers including oral fluid drug testing in their DOT-regulated drug testing program, the Department will allow the employer to switch to an oral fluid collection when an employee does not provide a sufficient urine specimen on their first attempt. Similarly, the Department will allow the employer to switch to a urine collection when an employee does not provide a sufficient oral fluid specimen on their first attempt. Under § 40.193, the employer has this option and the employer should communicate this option to the collector or the collection site in advance of any collection. The employer will need to ensure the collector is a qualified urine and/or oral fluid collector.

In either scenario when there is a successful collection under § 40.193, there is no requirement for the employer to send the employee for an evaluation of the first insufficient specimen type. In the rare circumstance when the employee is not able to provide a sufficient oral fluid specimen after the insufficient urine specimen or vice a versa, the employee would be required to only have an evaluation for the collection of the specimen type attempted under § 40.193. To be clear, the employer must send the employee for only a dry mouth medical evaluation if the employee has not provided a sufficient oral fluid specimen following an insufficient urine specimen. The MRO will only proceed with the dry mouth evaluation and not proceed with the shy bladder evaluation. Similarly, the employer must not send the employee for a dry mouth evaluation if the employee has not provided a sufficient urine specimen following an insufficient oral fluid specimen. The MRO will only proceed with the shy bladder evaluation and not proceed with the dry mouth evaluation. Only a shy bladder medical evaluation is to be done at that point. The final rule reflects this requirement.

Employers should strongly consider having oral fluid as an alternate methodology available for employees who need a reasonable accommodation because of a physiological or pre-existing psychological condition that renders the employee unable to provide a urine specimen. Similarly, if an employee needs a reasonable accommodation for dry mouth, it is advisable for the employer to have urine testing available.

In situations where the employee provides a suspect urine specimen (*e.g.,* temperature out of range, excess foaming, etc.), which leads to a successful oral fluid specimen collection, or vice versa, the collector would send both specimens to the respective laboratories for testing. In this scenario, the MRO would report the multiple verified results from one testing event in accordance with § 40.162. For example, if there were two negative results, a single negative result would be reported to the employer; if there were a negative and a verified non-negative result, only the verified non-negative result would be reported.

In addition, we asked for public comment as to whether the collector should use the same CCF when switching collection methodologies from urine to oral fluid or vise-a-versa. Some commenters thought this would be more efficient. Others thought it was too confusing to list a urine collection on the same form as an oral fluid collection is listed, even if there is an explanation in the ''Remark'' space on the CCF.

We agree with the commenters who said documenting the insufficient first specimen on the same CCF used for the second collection with a different methodology is likely to cause confusion. The laboratory for the urine collection might not be the same laboratory listed on the CCF for the subsequent oral fluid collection. If the specimen from the second collection is sent to the wrong laboratory, it will add confusion and delay, as the specimen will need to be rerouted to the correct laboratory. Not all HHS-certified laboratories for urine collections will be HHS-certified for oral fluid collections, and vice-versa.

For example, the CCF is designed for the collector to complete and document either an oral fluid or a urine collection process (*e.g.,* Step 2 identifies the specimen type, the specimen labels can be used for either type of specimen container). The CCF from a urine-only testing laboratory contains account and billing information only for the employer's urine drug testing account. The CCF from an oral fluid-only drug testing laboratory will contain account and billing information for the employer's oral fluid drug testing account. The CCF from a laboratory that conducts both urine and oral fluid drug testing would contain account and billing information for the employer's urine and oral fluid drug testing accounts. The collector will use a new CCF when switching collection processes. The rule text will reflect the need for the collector to ensure a correct CCF is used. The rule text will also reflect the requirement to document, in the ''Remarks'' section of the CCF, the reason for the changed collection process. It will not be a fatal flaw or correctable flaw if the collector does not make notes in the ''Remarks'' section.

Oral Fluid Insufficient Specimen (''Dry Mouth'') Specifics

Since oral fluid testing and ''dry mouth'' for insufficient oral fluid specimens are new concepts for DOT-regulated testing, the commenters asked many relevant questions. We appreciate the time people took to call out the details because their thoughts and concerns have made this a better final rule.

Some commenters asked exactly how ''dry mouth'' will be determined. The commenters also wanted to know how many attempts and/or how much time would a donor be given before the collector would end the collection and send it on to the DER to provide the contact information for an evaluation by a referral physician.

In § 40.48(c)(1), we use the term ''dry mouth'' to indicate an insufficient oral fluid specimen. This is shorthand, similar to the term ''shy bladder'' used for urine collections, for a situation in which an employee is unable to produce a sufficient specimen. An employee may tell a collector they think their mouth is dry before the collection begins. If the employee states their mouth is dry, then § 40.72(b)(1) requires the collector to give the employee up to 8 ounces of water to rinse their mouth. The employee may drink the water. The collector must then wait 10 minutes

before beginning the specimen collection. Incidentally, the commenters who responded to our question whether 10 minutes was an appropriate waiting time responded unanimously in support of this amount of time. Apparently, it is the industry standard.

It is a dry mouth scenario if the oral fluid device indicates the employee has not provided a sufficient specimen. If dry mouth occurs after the initial collection is attempted, this will begin a one-hour period to allow a sufficient specimen. Also, this necessitates a second oral fluid collection within one hour, or the employer could have a standing order to require the collector to move on to an alternate methodology (*i.e.,* urine) to complete the collection process for the testing event.

Some commenters asked how many attempts at providing an oral fluid specimen should be made before a finding of dry mouth is determined and a referral physician is needed. We were asked to consider conducting research concerning dry mouth. Some commenters wondered if we would require a specific period of time for attempts for an oral fluid collection. In addition, we were asked to describe or define what we meant in § 40.193(b)(2)(i) by requiring that the employee ''remain at the collection site, in a monitored area designated by the collector, during the wait period.''

We proposed procedures to go into effect 15 minutes after an employee fails to produce a sufficient specimen and the procedures would continue for one hour. We have adopted this proposal in § 40.193(b)(2)(i). If an employer has provided for an alternate methodology to be used in oral fluid insufficient specimen situations, then the collector would move on to the alternate methodology, which is currently urine. If the employer does not have this option, then the collector would follow the steps set forth in § 40.193(b)(2)(i) when the employee demonstrates an inability to provide a specimen after 15 minutes of using the collection device. As in urine testing, the time clock begins after the 15 minutes and when the employee attempts but is unable to provide a sufficient quantity of specimen. If the employee states they could provide a specimen after drinking some fluids, the collector must urge the employee to drink (up to 8 ounces) and wait an additional 10 minutes before beginning the next specimen collection (a period of up to one hour must be provided, or until the donor has provided a sufficient oral fluid specimen, whichever occurs first). The employee is not required to drink during the hour and their choice not to drink is not a refusal. The collector must provide a full hour for the employee to attempt another oral fluid collection. If the employee still cannot provide a sufficient specimen, then the collector must note this in the ''Remarks'' line in Step 2 of the CCF, and immediately contact the DER to begin the referral physician process for the dry mouth medical evaluation.

We will not be conducting our own studies on dry mouth but will continue to follow HHS for the science of oral fluid testing, as required by OTETA. In addition, a referral physician would evaluate the employee to obtain and provide to the MRO information about whether a ''medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen'', per § 40.193(d)(1). We rely on the referral physician and the MRO to remain versed in the current medical studies to make these important determinations, as they have done for more than 30 years in shy bladder urine testing cases.

To ''monitor'' an employee during a wait period in an oral fluid collection, we mean the employee must be supervised or observed for security and integrity of the collection process. This ensures they cannot take any actions to interfere with the integrity of the specimen they are required to provide. It does not need to be the actual collector who monitors the employee during the wait period. In fact, in § 40.48(c)(1), we say that the collector can conduct a collection for another employee during this wait period.

§ 40.195 What happens when an individual is unable to provide a sufficient amount of specimen for a pre-employment follow-up or return-to-duty test because of a permanent or long-term medical condition?

The only change we proposed in § 40.195 was in the title, where the more general ''specimen'' is substituted for ''urine,'' in view of the addition of oral fluid testing to the program. However, there were several commenters who wanted an oral fluid test conducted whenever there is a permanent or long-term medical situation.

Section 40.195 is the mechanism for an MRO to rule out the drug use of an employee who has been found under the clinical evaluation in § 40.193 to have permanent or long-term medical condition that renders that employee otherwise unable to produce a sufficient amount of urine required to yield a negative drug test result. A negative drug test result is required for a pre-employment, return-to-duty, or follow-up test. Historically, § 40.195 has not applied to random, post-accident, reasonable cause, or reasonable suspicion tests.

We anticipate most employers will embrace oral fluid testing for employees they know have permanent or long-term medical conditions that affect one's ability to urinate. However, we have not mandated that employers use oral fluid testing for employees with such medical conditions. It would be prudent for an employer to consider various cost factors for an oral fluid test versus a urine test in a shy bladder scenario. In addition, if an alternate methodology is not used, then when a negative drug test result is needed, there is the cost of having yet another evaluation for clinical evidence of drug use so that the MRO can determine whether a ''negative'' result can be issued under § 40.195. While an employer may not want to use two different testing methodologies on a regular basis, the situations of an inability to provide a sufficient specimen for either a urine test or an oral fluid test are excellent reasons for an employer to have a second methodology in place to plan for such contingencies.

One commenter acknowledged § 40.195 ''has long provided relief to employees with permanent or long-term medical conditions preventing the provision of a sufficient urine specimen in the cases of pre-employment, follow-up, or return-to-duty tests, in which a negative test is required.'' This commenter urged the Department to go further to allow an employee to bypass a urine specimen collection by producing documentation of their ''long-term medical conditions preventing giving a complete specimen [regardless of test type].''

While the Department agrees with the spirit of this commenter's point, we do not agree with allowing an employee to produce documentation to avoid a urine specimen collection. Individuals who are unable to produce a sufficient urine specimen, regardless of whether their condition is short-term or long-term, have the potential to undergo an oral fluid specimen collection instead of a urine collection, as long as their employer allows oral fluid testing. Prudent employers should take this into consideration when determining what testing methodologies to allow.

§ 40.197 What happens when an employer receives a report of a dilute urine specimen?

The only textual change in § 40.197 in the proposed rule is in the title, where the word ''urine'' would be inserted because this section concerns situations

that arise only in urine testing. We received no comments regarding this change and have adopted it as proposed.

§ 40.199 What problems always cause a drug test to be cancelled?

We proposed to add a new fatal flaw for use of an expired oral fluid collection device, in § 40.199(b)(8). In § 40.199 (b)(7) of, we proposed to replace the term ''urine'' with ''specimen,'' to reflect the addition of oral fluid testing to the program.

OraSure, a long-established oral fluid device manufacturer, agreed that the use of an expired device should be a fatal flaw. Quest Diagnostics also agreed with the addition of the new fatal flaw and said ''the use of an expired device (at the time of collection) should be considered a fatal flaw and collector error.''

We have adopted the proposed changes to § 40.199 without further change.

§ 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

In §§ 40.199(b)(7) and 40.201(f), we proposed to replace the term ''urine'' with ''specimen,'' reflecting the addition of oral fluid testing to the program. We received no comments on this proposal and have finalized it as proposed.

§ 40.210 What kinds of drug tests are permitted under the regulations?

The proposal acknowledged that oral fluid and/or urine specimens can be collected, and must be tested at HHS-certified laboratories. No other specimen methodologies are currently permitted. Furthermore, we proposed an employer can use one or the other, but not both urine and oral fluid methodologies at the beginning of the testing event. We offered an example ''if an employee is sent for a test, either a urine or oral fluid specimen can be collected, but not both simultaneously.''

ALPA agrees ''with DOT's proposal to require an employer to use one or the other methodology at the beginning of a testing event—but not both simultaneously.'' A consortium and MRO practice also supported ''using one method of testing at the beginning of the testing event, not both simultaneously.''

In § 40.210, we also discussed what to do if a problem arises that would require a second collection. Such problems would include when the employee provides a specimen that is an insufficient quantity of urine, has a temperature out of range, or is an insufficient oral fluid quantity. We asked for comment on whether the employer and/or its service agent would be the correct one(s) to make the decision as to which methodology to use in the second collection.

One commenter suggested using urine first in all collections and to use oral fluid testing if a second collection is needed. Another commenter said it would be easier to finish the testing event by using the same methodology for the second collection. The International Paruresis Association cautioned against continuing with a second urine collection after the employee produced an insufficient urine specimen unless the employee requested this. Another commenter asked ''how things would proceed when the alternate specimen was available only at a different collection site. How would the change of venue be handled? Would someone have to accompany or supervise the employee in transit between Site 1 and Site 2?'' Questions such as these are valid and will be best handled in the collection guidelines for both urine and oral fluid.

The remaining comments on this provision delved into the choices between having the employer and service agent make the choice as to what to do when a second collection is needed. NDASA said the employer should decide what methodology to use for the initial specimen ''and only in cases where an alternative is required to complete the collection, should the service agent make a determination.'' The New York City Department of Transportation commented in support of allowing either the employer or service agent to make a decision about the second collection. An MRO practice, Cynergy, said the employer's ''policy should dictate what is permitted if there is a problem in the collection that necessitates a second collection.''

Under § 40.210 we have retained the flexibility for either the employer, the service agent, or both working together, to decide what methodology to use for a second collection after a problematic first collection. We think the ideal is for the employer's policy to dictate what methodology should be used for the first test and for the second test, should a problem arise. However, if there is no standing order and the collector cannot contact the DER, then the service agent will need to make the decision as to the methodology to be used for the second test. Thus, we have adopted § 40.210 with minor changes to emphasize the flexibility discussed above.

§ 40.225 What form is used for an alcohol test?

We made a conforming change to § 40.225 and redesignated appendix G to be appendix I. We received no comments on this change.

§ 40.283 How does a certification organization obtain recognition for its members as SAPs?

In § 40.283, we made a conforming change redesignating appendix E to appendix G. We no comments received on this change.

§ 40.285 When is a SAP evaluation required?

In § 40.285, the word ''urine'' would be removed if oral fluid testing is added. Having received no comments on this change, we have finalized it.

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT Agency drug and alcohol testing regulations?

As discussed in the *Principal Policy* section of this final rule, the Department proposed to permit SAPs to conduct evaluations or assessments remotely by amending § 40.291(a)(1) and (3) to remove the requirement that SAP evaluations be only ''face-to-face'' and to explain what is required for remote evaluations. The changes we adopted are fully discussed and resolved in the *Principal Policy* section.

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

For the reasons discussed in the *Principal Policy* section of this final rule, we have removed the words ''face-to-face'' from paragraph (a) this provision to remote evaluations. In the context of remote evaluations and other issues of concern to SAPs, many commenters raised points that we have decided merit changes to § 40.293, as a logical outgrowth of their comments.

Specifically, some commenters expressed concerns about SAPs who are conducting remote assessments without following the requirements of subpart O of part 40. The commenters said some SAPs are not evaluating employees individually and are simply taking their money. The commenters asserted these purportedly noncompliant SAPs are regularly or even exclusively requiring employees to complete online education, regardless of the substance abuse issues the individual employee presents. Additional commenters said some SAPs offer low pricing for their services online and, before evaluating employees, allegedly promise the employees will only need to complete online education to satisfy the return-to-duty requirements, when some of these employees actually may need treatment

after an assessment and clinical evaluation is performed.

We appreciate that these concerns are serious, but we believe they potentially apply to all SAPs, not only those SAPs who conduct remote assessments. It is important to break out the individual points raised by the commenters, in order to explain what is already addressed in the existing subpart O of part 40, what we will not address through regulatory changes, and what we can address through rulemaking, as a logical outgrowth of these comments.

First, under § 40.293(a), each SAP must perform an assessment and clinical evaluation for each employee. Any SAP who is not performing an assessment and clinical evaluation for an individual employee is in direct violation of § 40.293(a). There is no modification to § 40.293(a) needed because the current regulatory language is clear.

Second, if a SAP prescribes online education for most or all of the individual employees that SAP evaluates, then the SAP would be in violation of § 40.293(b) through (d). These sections discuss the appropriate education and/or treatment the SAP would determine is necessary for each employee. In the final rule establishing subpart O, the Department said: ''For someone who performs safety-sensitive transportation functions, the very fact of a violation indicates a disregard of safety that must be addressed, corrected, and monitored in order to ensure safe performance of those functions in the future.'' 65 FR 79470 (Dec. 19, 2000). As a gatekeeper of transportation safety, the SAP has an essential duty to evaluate each employee and consider the employee's violation(s) in order to determine what help that individual needs and how to best address safety through getting the employee the help they need for their unique circumstances. If the SAP were to prescribe the same education and/or treatment requirement for every employee, the SAP would be violating part 40 and failing to fulfill their role as a gatekeeper of safety and enormous responsibility to the public.

The Department recently became aware that some SAPs were providing return-to-duty timelines to employees who violated the DOT drug and/or alcohol regulations before conducting the required initial assessment and evaluation of the employee. In response, we issued a list serve to remind SAPs of their regulatory responsibilities and the SAP's role in evaluating each individual employee and directing that employee to get the specific help the employee needs. *https://content.govdelivery.com/accounts/USDOT/bulletins/3304b9a*.

The SAP process was carefully designed to utilize the clinical evaluation and assessment skills and expertise of the SAP practitioner to evaluate each specific individual employee. The SAP must address the employee's needs for rehabilitation for the sake of the employee and give the employee the tools the employee needs to return to the performance of safety-sensitive duties. Consistent with sound clinical and established SAP standards of care in clinical practice, and utilizing reliable alcohol and drug abuse assessment tools, the SAP must conduct an assessment and evaluation, either in-person or remotely. As stated in ODAPC's SAP Guidelines, ''The evaluation should be comprised of a review of the employee's psychosocial history, an in-depth review of the employee's drug and alcohol use history (with information regarding onset, duration, frequency, and amount of use; substance(s) of use and choice; emotional and physical characteristics of use; and associated health, work, family, personal, and interpersonal problems); and an evaluation of the employee's current mental status.'' *https://www.transportation.gov/odapc/substance-abuse-professional-guidelines*.

In accordance with § 40.293, the SAP must provide a comprehensive assessment and clinical evaluation unique to the employee. As required by § 40.293(b), the SAP must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions. Providing estimated return-to-duty dates without such individual assessments and recommendations unique to the individual is yet another concern recently arising.

As a logical outgrowth of the proposal to add an option for remote evaluations and, in response to the concerns about some SAPs failing to individually evaluate, assess and recommend education or treatment, and a follow-up testing plan unique to the needs of each and every employee evaluated, we have added a new paragraph to § 40.293(e). This additional paragraph requires a SAP to use their professional judgment to individualize their assessment, clinical evaluation, education and/or treatment recommendations, and follow-up testing recommendations unique to each employee. In the regulatory text, we provided the example of not having the SAP require the same and/or substantially similar education, treatment and/or follow-up testing plan for most of the employees you assess. If the SAP prescribes the same treatment for every marijuana positive as a result of the SAP's personal philosophy about marijuana use and not as a result of evaluating and clinically assessing the needs of the individual employee, then the SAP is not exercising their professional judgment. If the SAP requires only online training for every employee who comes to the SAP, then the SAP is not individualizing their assessment and, actually, may not even be making an evaluation and assessment. Thus, this would certainly not fall within the bounds of using their professional judgment.

The SAP has highly respected roles and serious responsibilities under the DOT's regulations. The SAP is the key to ensuring the employee receives the education or treatment they need to have meaningful rehabilitation and treatment. In addition, the SAP has the extremely important responsibility of being the gatekeeper for transportation safety. The SAP is required to use their professional judgment to evaluate and assess the employee and direct the employee to get the individualized help they need. When the SAP role is carried out faithfully, the employee gets the help they need toward the road to recovery and toward being able to return to safety-sensitive functions in a way that will not pose a threat to safety. In short, the individualized evaluations and assessments carried out through the SAP's professional judgment as a safety gatekeeper ensure employees get the help they need, and transportation safety is protected and preserved.

Finally, as to costs a SAP advertises or charges, the Department will continue to remain silent, as we do on other questions of who pays and how much one would pay for services rendered to meet the requirements of part 40. Any SAP can charge a fee they determine is appropriate. Since the Department remains silent on all pricing issues, the marketplace controls what SAPs can reasonably charge and what individual employees with part 40 violations are willing to pay. We do not see a reason to intervene in this free market, which has been working successfully for more than 20 years.

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

As discussed in *Principal Policy* section of this final rule, we have removed the words ''face-to-face'' from paragraph (b)(2) this provision. We have added the words ''meeting the

requirements of § 40.291(a)(1) of this part'' to allow remote evaluations.

§ 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

In the SAP comments, there were discussions about follow-up testing, and as a logical outgrowth, we are clarifying several points. A follow-up testing plan contains the SAP's recommendation for the number and duration of follow-up tests to be conducted by the employer. The SAP can recommend drug follow-up testing and alcohol follow-up testing for a single drug violation or a single alcohol violation if the SAP determines that is necessary.

However, the SAP has no authority to determine the dates when the testing is to be done, that is up to the employer. The SAP can indicate the follow-up tests should be done close in time to certain triggering events for the employee (*e.g.,* birthdays, anniversaries of deaths, long weekends, etc.) or the SAP can choose not to make such suggestions.

The key to successful follow-up testing is that it is not announced to the employee in advance. If the employer, the SAP, or another service agent provides the follow-up testing plan to the employee, the employee can anticipate how many tests will take place and ''plan'' the period of time they need to abstain from illegal drug use or alcohol misuse to successfully complete their follow-up tests. Thus, it was always the intent that no one provide the follow-up testing schedule to the employee. We have added a new paragraph (g) to clarify this.

§ 40.311 What are the requirements concerning SAP reports?

For the reasons discussed in the *Principal Policy* section of this final rule, we have adopted the proposal to add the words ''and format (*i.e.,* face-to-face or remote)'' to § 40.311(c)(4), (d)(4), and (e)(4). In addition, we have amended § 40.311 to direct SAPs to note on their SAP reports whether a given evaluation occurred face-to-face or remotely.

Also as discussed in the *Principal Policy* section, we have adopted the proposal to change ''SSN'' to ''SSN or employee ID number'' in § 40.311(c)(1), (d)(1), and (e)(1) for consistency of terms in part 40 and to allow the use of additional identification numbers in SAP reports, instead of solely the SSN.

§ 40.327 When must the MRO report medical information gathered in the verification process?

In § 40.327, we proposed to add a clarification requiring MROs not to use the CCF to transmit information about safety concerns to employers or other authorized parties. Rather, a separate communication (*e.g.,* secure email or letter) must be used and will specify whether the MRO's safety concern relates to the use of a medication, the type of medical condition for which such a medication is typically prescribed, or some combination of the two. The purpose of providing this information is to allow the employer and/or any third parties to focus on the MRO's specific concern, rather than having to make an open-ended inquiry. This clarification echoes the Department's 2017 final rule preamble discussion that medical information is sent apart from the verified result report. (82 FR 52229, 52236; Nov. 13, 2017).

Several commenters, including NDASA and multiple MRO practices, supported this clarification. The Drug and Alcohol Testing Association (DATIA) commented in support of the proposal, saying: ''The MRO must take appropriate steps to balance public safety concern and the right to privacy of the individual that is subject to testing. We support fully the Department's 2017 final rule preamble discussion that medical information or any other communication regarding a safety sensitive concern should be processed and reported separately from the standard result report.''

Another major industry association opposed the proposal and appeared to be confused about what is currently required. The association said MROs should continue to report a significant safety risk with a negative test result. However, MROs have not been permitted to report the two simultaneously since 2017. Under § 40.135(e), MROs have been required to wait five business days between reporting a negative test result and reporting a significant safety risk they have determined under § 40.327 regarding an employee who does not hold DOT-regulated medical certification. *See* 82 FR 52236 (Nov. 13, 2017).

One MRO practice thought the clarification would allow the MRO ''to discuss specifics with the DER, avoiding more vague references to safety concerns thus enabling a more focused fitness for duty process.'' This commenter supported the proposal.

There is no duty of confidentiality between the MRO and the employee, as every MRO must declare to each employee. Instead, per § 40.135(d), the MRO is ''required to provide third parties drug testing information and medical information affecting the performance of safety-sensitive duties that the employee gives . . .'' Under § 40.135(d)(2), this includes ''information on medicines or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.'' Thus, with informed consent, the employee provides such information to the MRO who can share it with the employer. However, what the employer does with such information may impact the Americans with Disabilities Act or other Federal, State or local civil rights laws and responsibilities. These are matters outside the jurisdiction of the DOT. Employers should consult with their counsel to understand how they can use such information received by the MRO without violating the Americans with Disabilities Act, the Rehabilitation Act of 1973, or other State or Federal laws. We are adopting § 40.327 as proposed.

§ 40.345 In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

As a conforming change, we have updated the reference from appendix F to appendix H, § 40.345. There were no comments on this point.

§ 40.355 What limitations apply to the activities of service agents?

In § 40.355(n) (Example 3), we have removed the word ''urine'' to allow the section to apply to both approved methodologies for testing. We received no comments on this proposed change.

We received one comment regarding § 40.355(a), which we had not proposed to change. The commenter asked us to include the term ''treatment provider'' in list of the entities that must not require an employee to sign a consent form. The commenter noted the term ''treatment provider'' is included in the DOT's HIPAA statement (*https://www.transportation.gov/odapc/hipaa-statement*), and in the Release of Information section of the DOT's Substance Abuse Guidelines (*https://www.transportation.gov/odapc/substance-abuse-professional-guidelines*). In the HIPAA statement, we say ''SAPs need no written authorizations from employees to conduct SAP evaluations, to confer with employers, to confer with MROs, to confer with appropriate education and

treatment providers, or to provide SAP reports to employers.'' We state this because SAPs are performing a role as a safety official within the bounds of part 40 and not as a health care provider. Thus, it would not be appropriate for us to instruct treatment providers, who are likely covered under HIPAA when they accept insurance payments, to communicate with third parties without the consent of their patient/client. It would also be outside the jurisdiction of the Department to do this. On page 10 of the SAP Guidelines, we instruct SAPs to provide information to treatment providers, but we lack jurisdiction to require treatment providers to provide information to SAPs.

Section 40.355(a) would not restrict a SAP from asking an employee to execute a HIPAA waiver with the treatment provider to provide the SAP with information about treatment progression and conclusion. That information is essential to the SAP being able to determine whether the employee has successfully complied with the education and/or treatment. Without this information, the SAP cannot complete the follow-up evaluation of the employee. It is in the best interests of the employee to execute such a release for the treatment provider to communicate. If the employee does not provide the appropriate releases and the information is not conveyed to the SAP, then the employee will not be permitted to return to work. We think this natural progression of the process has been successful and we have not made the suggested change.

§ 40.365 What is the Department's policy concerning starting a PIE proceeding?

We proposed to amend § 40.365 to say a PIE could occur because a SAP failed to conduct an evaluation using the means provided in § 40.291(a)(1), rather than because there was no face-to-face evaluation. NDASA and several other commenters concurred with the change. We have adopted it as proposed.

Appendices

Appendix A, concerning urine collection kits remains unchanged. We have added a new Appendix B, establashing standards for oral fluid collection kits, based on material in the HHS OFMG and consistent with OTETA requirements for a split specimen. The remainder of the appendices have been renumbered and reordered, as explained below. For a summary of these changes, see the redesignation table.

Appendix B

Appendix B describes the requirements for the contents of an oral fluid collection kit. Where we could conform to the HHS OFMG, we did so. We differed from HHS in some aspects of the collection kits because OTETA requires a single collection that must be subdivided in the presence of the employee. This necessitated unique requirements for DOT-regulated entities. For a full discussion of the comments in support of and opposing our approach in appendix B, as well as the Department's responses, see the section-by-section analysis above for § 40.49.

In viewing the public comments and in consultation with HHS, we restructured appendix B, section 1(a) to address future devices that may be invented, as well as neat collection devices that currently exist in what we now have as appendix B, section 1(a)(1). We have a new appendix B, section 1(a)(2), similar to what we proposed, for devices utilizing a buffering solution. We have removed some specific language from the proposal regarding quantities of specimens and percentages of undiluted (neat) oral fluid because these do not need to be included in part 40. An oral fluid collection device will not be permitted to be used in the DOT-regulated drug testing program unless HHS has approved a certified laboratory to deploy a particular device. In other words, unless HHS has approved an HHS-certified laboratory to use a particular oral fluid collection device, that device will not be used. So, it is unnecessary and inconsistent for part 40 to create device or volume specifications separate from those of HHS. This is part of the scientific aspect of drug testing we defer to HHS.

Alere Toxicology provided comments including language edits with which we agree and have added to the final rule language, with slight modification. Specifically, this commenter recommended a change in appendix B, section 1(a) of ''specimen bottle or tube'' instead of merely ''specimen bottle.'' They also suggested a change to appendix B, section 1(a) to add ''a single pad or dual pads'' for a description of the single collection which can be subdivided into two separate collection tubes. We have added these to appendix B, section 1(a)(2) and have included a slight modification to make it clear that the dual pads must be joined for insertion together into the same spot in the mouth. This further clarifies details about the single collection device that would be subdivided in the presence of the donor, which we must require under OTETA.

We appreciate ALPA's comments, in which they supported the way we have described neat and wet collections in appendix B, section 1(a). They believe we have met OTETA on the requirements for these devices.

OraSure requested ''additional language should be added allowing for the use of a single device, consisting of 2 cotton fiber pads, placed back-to-back or side by side, which after the collection, can be split into an A & B samples.'' We agree and the language added to appendix B section 1(a)(2) described above should address this. OraSure asked us to leave room to allow entirely different types of devices ''that could be pad based or non-pad-based devices so long as they meet'' what we are asking for under OTETA. This is a reasonable request, and we have added the new appendix B, section 1(a)(1) to include devices that we have not contemplated as of this time.

Both buffered and undiluted (neat) specimen collection devices must have an expiration date. For clarity, we have added a parenthetical to appendix B, section 1(e) to indicate the expiration date is the shortest expiration date of any component. We recognize that this date could be more than a decade after an undiluted (neat) specimen collection device is manufactured. However, we proposed and there were no dissenting comments regarding the need for an expiration date. We want to ensure the integrity of the testing process and that collectors will always enter the device expiration regardless of whether the device is a buffered collection device or an undiluted (neat) specimen collection device.

We asked for public comments specifically regarding whether devices should be sufficiently transparent so the collector can observe whether there is anything unusual about the specimen collected and take action to perform a re-collection, if appropriate. We proposed language in appendix B, section 1(c) to ensure that transparency.

Several commenters including DATIA, OraSure, Quest Diagnostics, the New York City Department of Transportation, and others commented in favor of this proposal. Many commenters said the tubes should be sufficiently transparent, or at least semi-transparent, to assist collectors in detecting adulteration. Alere San Diego also agreed, saying ''the tube . . . should be sufficiently transparent to allow the collector the ability to ensure the sample is visible.'' We agree with these commenters.

In addition, some commenters wanted to see a minimum volume indicator built into the device or vials to ensure

the collector has gathered enough specimen for the laboratory to process. One commenter noted that there are at least two devices already on the market with an indicator showing whether enough fluid was collected. We agree with these commenters and have finalized the proposed language.

In appendix B, section 1(h), we proposed to require the tamper-evident bottle seals for bottles A and B ''not conceal printed information.'' NDASA urged that we not require the use of ''clear security labels'' because it would be a cost increase. In addition, NDASA said ''clear label materials are an untested technology, without evidence of how a clear label product could affect the collection device and its components. For the collector to verify the expiration date during the collection process and then adhere paper-based security seals which are already in use and industry standard, should suffice in the collection process.'' Quest Diagnostics also strongly stated we should not require transparent seals ''because of high costs of manufacturing the transparent seals (estimated at an increase of $300,000 annually) and the intended purpose would be for the lab to be better able to read the expiry dates, which the collectors should do.'' In addition, Quest Diagnostics noted, ''the current seals stand up to heat of travel and freezing in the lab, transparent labels may not do as well.''

We appreciate these concerns and observations. We will only require that the seals not conceal the printed information on Bottles A and B and that the seals not be damaged by the employee initialing or the collector signing them. This creates a performance standard, and we are not requiring more specific details for compliance with this provision.

We have amended the proposed appendix B, section 1(i) to state the oral fluid collection device ''must be approved by HHS for use by the specific HHS-certified laboratory that will test the specimen gathered by this device.'' As discussed above, if HHS approves the use of a particular device by an HHS-certified laboratory, we defer to that approval.

Appendix D

The resdesignated appendix D (the former appendix B) concerns semi-annual reports laboratories provide to employers. The new appendix D sets forth matters to be reported with respect to urine and oral fluid testing respectively. No comments were received on these changes, and they are adopted as proposed.

Appendix E

In the redesignated appendix E (the former appendix C), the Department proposed to amend the data elements that HHS-certified laboratories submit to DOT semi-annually. With this change, laboratories will continue to provide the DOT with the drug testing data but to be broken out by specimen type (*i.e.,* urine and oral fluid), DOT agency (*i.e.,* FMCSA, FAA, FRA, FTA, PHMSA, the US Coast Guard) and test reason (*i.e.,* pre-employment, random, reasonable suspicion/cause, post-accident, return-to-duty, other, and follow-up). The proposal required each laboratory to submit multiple data summaries as opposed to the one data summary they now provide. The additional data elements will assist the Department in evaluating the efficacy of testing by oral fluid versus urine. In addition, we anticipate developing a better understanding of any trends in drug testing by specimen type, DOT agency and/or test reason(s).

There were very few comments to the proposed biannual reporting changes. One DOT-regulated employer opposed the concept of collecting data from laboratories at all because the collectors make errors on the test type and the DOT agency they list on the CCF. This employer thought these mistakes would make the data unreliable. We also received public comments suggesting there would be cost associated with adding the proposed data elements, but no costs were quantified by the commenters.

While any change to searches set up for data collection may have an initial cost, the changes to the redesignated appendix C fall within data elements already collected by the laboratories. We did not ask for new data to be collected. It is our understanding that most, if not all of the HHS-certified laboratories capture these data elements either as a result of implementing the electronic Federal Drug Testing Custody and Control Form, or in their Laboratory Information Management System, as part of tracking the specimens and reporting out test results to the Medical Review Officer.

The Department has required laboratories to submit data biannually since 2018. This data has proven to be effective in analyzing drug use trends. Even though there could be some potential collector errors, there is still great utility for this data collection. Due to this value to DOT and since no quantifiable burdens were identified with adding the new data elements, we have adopted the changes as proposed.

Appendix F

Current appendix D, concerning reports on split specimen failures to reconfirm, will become appendix F under this final rule. We proposed to add the ''specimen type'' as another element to the information the MRO currently provides so we can track the two specimen types. We received no comments on this proposal, other than to agree with the redesignation of the appendices, and have adopted the changes to appendix D.

Appendix G

Current appendix E, on SAP equivalency requirements for certification organizations, would become appendix G. We received no comments on this proposal, other than to agree with the redesignation of the appendices, and have adopted it as proposed.

Appendix H

Current appendix F, concerning drug and alcohol testing information can be transmitted by C/TPAs, would become appendix H. We received no comments on this proposal, other than to agree with the redesignation of the appendices, and have adopted it as proposed.

Appendix I

Current appendix G, the Alcohol Testing Form, would become appendix I. We received no comments on this proposal, other than to agree with the redesignation of the appendices, and have adopted it as proposed.

Appendix J

Finally, appendix H, the MIS data collection form, would be found in appendix J. We received no comments on this proposal, other than to agree with the redesignation of the appendices, and have adopted it as proposed.

Miscellaneous Comments Outside the Scope

We received many comments outside the scope of this rulemaking. These included a request for a new provision to say, ''if a test is given to an employee who per the applicable agency rule should not have been subjected to that test, it must be treated for all purposes as a non-DOT test.'' We received several comments about the PIE process. A few commenters wanted to see an appeal process for any positive or refusal verified by an MRO, as well as any employer-determined refusals.

Another commenter wanted guidance or regulatory text to address how people should proceed if the donor or collector

appears to be ill at the time of the test. A standard approach cannot be applied because each situation is different. In § 40.61(b)(2) we already say that medical care for the employee is to be provided before the drug test is administered.

One commenter wanted us to have collectors and collection sites ''explicitly warn employees of the consequences of non-cooperation or leaving a collection site prematurely, which could be done via posters or words in the script collectors use to begin the process with employees.'' The requirement to follow the DOT's regulations is a matter of Federal law, so the collectors are not obligated to remind employees of their duties under the regulations that govern their work responsibilities. However, we are aware that many collectors, as a best practice do warn employees. In addition, ODAPC has issued several posters that collection sites and workplaces can post to remind employees ''What You Can Lose if You Refuse.''

NDASA made several suggestions that are outside the scope but are helpful suggestions for revisions to our collection guidelines. They suggested including in our guidelines the situations of ''donors who enter the facility claiming inability to provide a specimen before an attempt to provide is made, donors leaving before shy bladder is complete, the point at which the actual collection process begins, who may and may not determine a refusal to test.'' NDASA also suggested we ''produce an updated collector training video to include all specimen types.'' Another helpful suggestion was to clarify if the collector can rely on an expired identification as proof of their identity. We will address that in our collection guidelines.

We also received a comment requesting refusal training for all employers. This is outside the scope of part 40. Instead, the DOT agency regulations would need to include such requirements for their respective regulated employers.

Another commenter requested a strengthening of and expansion for the conflict-of-interest provisions in part 40. This issue is outside the scope of this regulation. Also, as this commenter mentioned, ''the provisions that already exist in § 40.101 regarding prohibited relationships and in other areas of part 40 that speak to improper actions on the part of a service provider, and retaliation for reporting improper actions to employers and regulators''.

Other comments outside the scope included requests to remove urine testing, add hair testing, include point of collection testing (without laboratory-based testing included), removing marijuana testing, and other matters involving the science of DOT-regulated testing. As we have said many times, OTETA requires DOT to follow HHS for the drugs for which we test, the scientific and technical aspects, and that we must use HHS-certified laboratories for the screening and confirmation of our regulated specimens. Thus, these comments are outside the scope of this rulemaking and have not been further addressed.

Common Preamble

While part 40 provides the regulatory provisions for how to administer drug and alcohol testing, the DOT agency regulations provide the specifics of what employers and employees are subject to testing and when to conduct the testing. In order to allow oral fluid drug testing across the DOT-regulated transportation industries, we must make some minor adjustments to some of the DOT agency regulations. Specifically, we are making conforming changes to 14 CFR part 120 (FAA), 49 CFR part 219 (FRA), 49 CFR part 382 (FMCSA), and 49 CFR part 655 (FTA), all of which are directly subject to the OTETA mandate to follow the HHS Mandatory Guidelines for the scientific and technical requirements for oral fluid testing under part 40. Without the changes explained in this Common Preamble, these DOT agencies would not be able to allow oral fluid testing. Consequently, this final rule addresses urine-specific provisions; adds, removes and modifies definitions; and makes other technical changes specifically set forth below. Incidentally, PHMSA has determined it does not need to make any changes to its drug testing regulations to permit oral fluid testing, thus there are no changes to 49 CFR part 199 in this final rule. Part 199 utilizes the testing procedures of part 40.

FAA

In 14 CFR part 120, the FAA has revised the definitions of ''Alcohol'' to be consistent with part 40. The FAA has corrected the definition of ''Refusal to submit to drug test'' to reference covered employees. It is important to note this is not a change in coverage, it is only a technical change to phrasing. The FAA has added the definition of ''Alcohol misuse'' to reference the alcohol misuse prohibitions under subparts C or D of part 120. The FAA has removed the following definitions because they are unnecessary and/or already defined in part 40: ''Alcohol Concentration (or content)'', ''Alcohol use'', ''DOT agency'', ''Verified negative drug test result'', and ''Verified positive drug test result''. Due to the removal of these definitions, several paragraphs of § 120.7 have been redesignated and the definitions of ''Covered employee'' and ''Employee'' have been updated. In §§ 120.119(b) and 120.219(b)(2), the FAA has changed references to ''Appendix H'' to become references to ''appendix J'' because those appendices are redesignated in part 40. In §§ 120.111(d) and 120.221(d), the FAA corrected references to ''employee'' to ''covered employee.'' All of these changes are conforming only and do not otherwise amend the underlying provisions of 14 CFR part 120.

Federal Railroad Adimistration (FRA)

FRA has made the followings changes to the regulatory text in part 219, which are solely for purpose of either conforming with part 40 or correcting an error in the regulatory text, and do not affect the substance of FRA's rule.

In 49 CFR part 219, FRA amended §§ 219.11(a)(2) and (h), 219.617(b)(2), 219.619, 219.621(a), and 219.903(a) to conform with changes made today to part 40. FRA's revisions have generally removed the term ''urine'' and replaced it with references to body fluid specimens to capture both the existing urine specimens and the new alternate oral fluids specimens.

FRA has made minor technical corrections to § 219.4. To conform with terminology used in part 40, FRA replaced the term ''return-to-service'' with ''return-to-duty'' in § 219.4(a) and (b)(1) and (2). FRA has further amended § 219.4(b)(2) to remove an incorrect reference to ''paragraph (d) of this section'' and replaced it with the correct reference to ''§ 219.104(d),'' which establishes the return-to-duty requirements this paragraph addresses.

FRA has also made the following technical changes to part 240—Qualification and Certification of Locomotive Engineers and part 242—Qualification and Certification of Conductors. The amended provisions previously used the word ''urine'' when referencing certain provisions of part 219 that a railroad must consider when determining whether a person may be or remain certified as a locomotive engineer or conductor. These changes are solely for the purpose of conforming with part 40 and do not affect the substance of FRA's locomotive engineer and conductor certification regulations. Specifically, in part 240, FRA is amending § 240.119(e)(4)(iv)(A) and (f)(1)(iii) to replace the word ''urine'' with the words ''body fluid.'' In part 242, FRA is amending § 242.115(e)(4)(iv)(A) and (f)(1)(iii) to

replace the word ''urine'' with the words ''body fluid.''

With respect to oral fluid and FRA post-accident toxicological testing, persons subject to part 219 should note that FRA's post-accident toxicological testing requirements in part 219, subpart C are not subject to the OTETA mandate and therefore do not follow part 40 procedures. *See* §§ 40.1(c), 219.205(a), and 219.701(a) and (b). This final rule allowing for oral fluid testing therefore does not apply to FRA post-accident toxicological testing, which still requires urine and blood specimens, as well as body fluid and tissue specimens for post-mortem tests. *See* §§ 219.203(a)(1), 219.205(a), and 219.207(a).

Federal Motor Carriers S* * * Administration (FMCSA)

In part 382, the FMCSA has amended §§ 382.107, 382.401(b) and (c), 382.403(b), 382.409(b), and 382.705(a) to conform with changes made to part 40. The revised text includes references to oral fluid specimens as an alternate to urine specimens and added the term ''oral fluid collectors'' as necessary. The FMCSA also updated references to sections of part 40 (*i.e.,* references to appendices) that were redesignated in the oral fluids final rule and has added references to a Medical Review Officer's reversal of canceled drug test results. These changes are conforming only and do not otherwise amend the underlying provisions of 49 CFR part 382.

Federal Transit Administration (FTA)

In 49 CFR part 655, FTA has amended § 655.53 to add ''oral fluid collector''. FTA has modified § 655.71 to explicitly add ''oral fluid specimen'' to conform with changes made today to part 40 to add oral fluid specimens as an alternate to urine specimens, a small technical change is being made to correct ''breathe'' to ''breath'', also. In §§ 655.47 and 655.61(a)(3), FTA revised the term ''employee'' to read as ''covered employee.'' FTA has made technical changes to conform with the rest of Parts 40 and 655, including amending § 655.5(c) to update their street address; revised § 655.15(e) by replacing ''illegal'' with ''prohibited''; and revised § 655.44(a)(1)(i) by correcting a reference to ''part 389''. These changes are technical or conforming only and do not otherwise amend the underlying provisions of 49 CFR part 655.

Good Cause for Adoption Without Prior Notice and Comment

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

The changes being made to the regulations of FAA, FMCSA, FRA, and FTA are all conforming technical edits to conform with the OST part 40 regulations. Because the underlying part 40 regulations received the benefit of notice and comment, further public comment on the conforming edits is not necessary.

IV. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—

1. Search *regulations.gov* (*https://www.regulations.gov*) for the docket number listed at the beginning of this document; or

2. Search the Office of the Federal Register's web page (*https://www.federalregister.gov*) for the RIN listed at the beginning of this document.

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

The Office and Management and Budget (OMB) has determined that the rulemaking action is not significant under Executive Order 12866 (''Regulatory Planning and Review''), as supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review''). Accordingly, OMB has not reviewed it under that order.

The final rule allows transportation employers and drug test collection sites to use oral fluid testing instead of urine testing for DOT-regulated drug tests. Compared with the baseline scenario in which employers must use urine testing for all drug tests, the rule may reduce costs for employers and collection sites, improve the effectiveness of drug testing, and reduce burdens for individuals undergoing testing. Oral fluid testing is optional in all but very rare cases, and DOT expects that employers would adopt it only when benefits exceed costs.

The extent of the benefits depends on the degree to which employers and collection sites adopt oral fluid testing. For non-DOT drug tests, an increasing number of companies utilize oral fluid testing. In 2022, 38% of respondents to a drug testing industry survey reported that their company already offered oral fluid testing.[3] An additional 48% expected that their company would offer oral fluid testing after SAMHSA and DOT establish guidelines. Some of the respondents may not be involved in DOT-regulated testing, but the results demonstrate industry interest in adopting oral fluid testing.

Cost Savings

Allowing employers to use oral fluid testing may result in cost savings for employers by reducing the time individuals need to spend undergoing testing. Most urine collections occur in separate collection facilities, requiring individuals to travel to and from the facilities. Oral fluid collection could occur at or near the workplace, reducing travel time.

Oral fluid testing may also reduce resources needed to administer tests. Collectors administering urine tests must secure the site to ensure the integrity of the testing process. Securing the site involves restricting access to water sources and ensuring that individuals cannot alter or switch urine samples. Oral fluid testing, in contrast, is directly observed and requires fewer resources to ensure testing integrity.

Oral fluid testing may offer a less time-consuming alternate to existing procedures when an employee cannot produce a sufficient urine specimen—for example, in a ''shy bladder'' situation or when specimens show evidence of tampering. Currently, employers must give individuals up to three hours to try producing a urine specimen again. If an individual still cannot produce a urine sample, the employer must refer the individual to a physician for further evaluation. The rule would allow employers to switch immediately to an oral fluid collection after the first failed attempt. Employers could similarly switch from oral fluid to urine collection if, for example, an employee has a ''dry mouth'' situation.

DOT estimated cost savings for employers in the NPRM but has not done so for the final rule. In the NPRM, DOT used testing costs from industry and projected adoption rates from the HHS rule on oral fluid guidelines to estimate annual net cost savings of $25.0 million by the fourth year. As detailed in ''Principal Policy Considerations,'' commenters disputed the information used. Some commenters asserted that an oral fluid test has slightly higher costs than a urine test, in

[3] Current Consulting Group. 2022. ''The 2022 Drug Testing Industry Survey.'' *http://www.currentconsultinggroup.com/wp-content/uploads/2022/07/2022-Drug-Testing-Industry-Survey.pdf.*

part because oral fluid collection kits use chemical buffering solutions with a limited shelf life. At the same time, economies of scale may lead to lower unit costs for oral fluid tests if the drug testing industry increases its volume of testing. Given the uncertainty of testing costs and lack of data on other aspects of testing, DOT has not estimated cost savings or other benefits for the final rule. Nonetheless, commenters acknowledged the potential for cost savings.

Improved Effectiveness of Testing

Allowing employers to use oral fluid testing may improve the effectiveness of drug testing. Oral fluid testing can detect the recent use of some drugs, including marijuana and cocaine,[4] [5] while urine drug testing has a longer window of detection. More effective drug testing could deter employee illicit drug use and reduce safety risks from drug use.

Reduced Burdens for Individuals Undergoing Testing

Oral fluid testing can reduce anxiety, discomfort, and other burdens for individuals undergoing testing because it is less intrusive and time-consuming than urine testing. For example, while most DOT-regulated urine tests are unobserved, a small number require direct observation. In observed tests, an observer of the same gender as the employee watches the employee urinate into the collection container. Allowing the alternative of oral fluid testing would reduce discomfort and other issues for individuals, including potential civil rights issues for transgender or non-binary individuals. Reducing the burdens associated with testing may also reduce barriers to transportation employment for individuals deterred by current testing requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and minimize any significant economic impact.

The Department does not expect that the rule would have a significant economic impact on a substantial number of small entities. The rule increases flexibility for small-entity transportation employers and drug test collection sites by allowing them to use oral fluid testing instead of urine testing to meet DOT testing requirements. Oral fluid testing is a voluntary option for the small entities. Accordingly, the Department certifies that the rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

The Secretary has examined the impact of the final rule under the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). This notice does not trigger the requirement for a written statement under section 202(a) of the UMRA because this rulemaking does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by either State, local, and Tribal governments in the aggregate or by the private sector in any one year. In fact, by providing a lower cost alternative to urine drug testing, the final rule would reduce costs to regulated parties, including State and local entities (*e.g.,* public transit authorities, public works departments) whose employees are subject to testing.

Environmental Impact

The DOT has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts'' (44 FR 56420, October 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). This final rule amends the transportation industry drug testing program procedures regulation to include oral fluid testing. Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, ''[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . .'' 23 CFR 771.118(c)(4). The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 13132: Federalism

The Secretary has analyzed the final rule in accordance with Executive Order 13132: Federalism. Executive Order 13132 requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt State law. As defined in the order, ''policies that have federalism implications'' refer to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Most of the regulated parties under the Department's drug testing program are private entities. Some regulated entities are public entities (*e.g.,* transit authorities, public works departments); however, as noted above, this proposal would reduce costs of the Department's drug testing program and provide additional flexibility for regulated parties. Accordingly, the Secretary has determined that the final rule does not contain policies that have federalism implications.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires Federal agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' as defined in the Executive order, include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This final rule does not have tribal implications. Nor will they have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175.

[4] Edward J. Cone and Marilyn A. Huestis. 2007. ''Interpretation of Oral Fluid Tests for Drugs of Abuse.'' *Annals of the New York Academy of Sciences* 1098, 51–103. *https://doi.org/10.1196/annals.1384.037.*

[5] Rebecca Jufer, Sharon L. Walsh, Edward J. Cone, and Angela Sampson-Cone. 2006. ''Effect of Repeated Cocaine Administration on Detection Times in Oral Fluid and Urine.'' *Journal of Analytical Toxicology* 30(7): 458–462. *https://doi.org/10.1093/jat/30.7.458.*

Paperwork Reduction Act

The PRA requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public. We will need a new data collection section for oral fluid specimens on the U.S. Department of Transportation Drug and Alcohol Testing MIS Data collection form (OMB No. 2105–0529), which DOT-regulated employers currently use to report their urine drug testing data annually. There will be no increase in the number of tests conducted. For those employers choosing to use oral fluid, in addition to urine testing, there will simply be a redistribution of the total number of tests split between the drug testing methodologies the employer uses. Thus, for the employers who choose to use both methodologies, we expect a nominal increase in the burden hours because they will have one more simple section to fill out on the form. The information collections for oral fluid testing are covered by HHS under OMB Control Number 0930–0158. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

Privacy Act

Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation (ICAO), it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that its portion of this final rule does not conflict with any international agreement of the United States.

List of Subjects

14 CFR Part 120

Air carriers, Alcoholism, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Operators, Reporting and recordkeeping requirements, Safety, Safety-sensitive, Transportation.

49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railway safety, Reporting and record keeping requirements, Safety, Transportation.

49 CFR Part 240

Administrative practice and procedure, Locomotive engineer, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Conductors, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 655

Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, the Department amends 14 CFR chapter 1 and 49 CFR chapters I through III and VI as follows:

Title 14—Aeronautics and Space

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101–45105, 46105, 46306.

■ 2. Revise § 120.7 to read as follows:

§ 120.7 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Accident* means an occurrence associated with the operation of an aircraft which takes place between the time any individual boards the aircraft with the intention of flight and all such individuals have disembarked, and in which any individual suffers death or serious injury, or in which the aircraft receives substantial damage.

(b) *Alcohol* means any substance specified in 49 CFR part 40.

(c) *Alcohol misuse* means any prohibited conduct referenced under subpart C or D of this part.

(d) *Contractor* is an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

(e) *Covered employee* means an individual who performs, either directly or by contract, a safety-sensitive function listed in §§ 120.105 and 120.215 for an employer (as defined in paragraph (g) of this section). For purposes of pre-employment testing only, the term ''covered employee'' includes an individual applying to perform a safety-sensitive function.

(f) *Employee* is an individual who is hired, either directly or by contract, to perform a safety-sensitive function for an employer, as defined in paragraph (g) of this section. An employee is also an individual who transfers into a position to perform a safety-sensitive function for an employer.

(g) *Employer* is a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. An employer may use a contract employee who is not included under that employer's FAA-mandated drug and alcohol testing program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated drug and alcohol testing program and is performing a safety-sensitive function on behalf of that contractor (*i.e.,* within the scope of employment with the contractor.)

(h) *Hire* means retaining an individual for a safety-sensitive function as a paid employee, as a volunteer, or through barter or other form of compensation.

(i) *Performing* (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.

(j) *Positive rate for random drug testing* means the number of verified positive results for random drug tests conducted under subpart E of this part, plus the number of refusals of random drug tests required by subpart E of this part, divided by the total number of random drug test results (*i.e.,* positives,

negatives, and refusals) under subpart E of this part.

(k) *Prohibited drug* means any of the drugs specified in 49 CFR part 40.

(l) *Refusal to submit to alcohol test* means that a covered employee has engaged in conduct including but not limited to that described in 49 CFR 40.261, or has failed to remain readily available for post-accident testing as required by subpart F of this part.

(m) *Refusal to submit to drug test* means that a covered employee engages in conduct including but not limited to that described in 49 CFR 40.191.

(n) *Safety-sensitive function* means a function listed in §§ 120.105 and 120.215.

(o) *Violation rate for random alcohol testing* means the number of 0.04, and above, random alcohol confirmation test results conducted under subpart F of this part, plus the number of refusals of random alcohol tests required by subpart F of this part, divided by the total number of random alcohol screening tests (including refusals) conducted under subpart F of this part.

§ 120.111 [Amended]

■ 3. Amend § 120.111 in the first sentence of paragraph (d) by adding the word ''covered'' before the word ''employee''.

§ 120.119 [Amended]

■ 4. Amend § 120.119 in the first sentence of paragraph (b) by removing ''appendix H'' and adding in its place ''appendix J''.

§ 120.219 [Amended]

■ 5. Amend § 120.219 in the first sentence of paragraph (b)(2) by removing ''appendix H'' and adding in its place ''appendix J''.

§ 120.221 [Amended]

■ 6. Amend § 120.221 in the first sentence of paragraph (d) by adding the word ''covered'' before the word ''employee''.

Title 49—Transportation

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 7. The authority for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 8. Amend § 40.3 by:

■ a. Removing the definitions of ''Invalid drug test'' and ''Screening drug test'';

■ b. Removing the definition of ''Initial drug test (also known as ''Screening drug text'') and adding a definition for ''Initial drug test'' in its place;

■ c. Removing the definition of ''Limit of Quantification'' and adding a definition for ''Limit of Quantification (LOQ)'' in its place;

■ d. Adding in alphabetical order definitions for ''Alternate specimen'', ''Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse)'', ''Cutoff'', ''Oral fluid specimen'', ''Specimen'', ''SSN or Employee ID No.'', ''Undiluted (neat) oral fluid'', and ''Urine specimen''; and

■ e. Revising the definitions of ''Collection container'', ''Collection site'', ''Confirmatory drug test'', ''Initial specimen validity test'', ''Invalid result'', ''Laboratory'', ''Limit of Detection (LOD)'', ''Non-negative specimen'', ''Primary specimen'', ''Reconfirmed'', ''Shipping container'', ''Specimen bottle'', ''Split specimen'', ''Split specimen collection'', and ''Substituted specimen''.

The additions and revisions read as follows:

§ 40.3 What do the terms used in this part mean?

* * * * *

Alternate specimen. An authorized specimen, other than the type of specimen previously collected or attempted to be collected.

* * * * *

Collection container. A container used to collect a specimen.

Collection site. A place selected by the employer where employees present themselves for the purpose of providing a specimen for a drug test.

* * * * *

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse). A database, administered by the Federal Motor Carrier Safety Administration, containing records of commercial motor vehicle drivers' violations of controlled substances and alcohol testing program requirements, as set forth in part 382 of this title, as well as their return-to-duty status.

* * * * *

Confirmatory drug test. A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify a specific drug or drug metabolite.

* * * * *

Cutoff. The analytical value (*e.g.,* drug or drug metabolite concentration) used as the decision point to determine a result (*e.g.,* negative, positive, adulterated, invalid, or substituted) or the need for further testing.

* * * * *

Initial drug test. The first test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test. The first test used to determine if a specimen is adulterated, diluted, substituted, or invalid.

Invalid result. The result reported by an HHS-certified in accordance with the criteria established by HHS when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards set by HHS; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD). The lowest concentration at which the analyte (*e.g.,* drug or drug metabolite) can be identified.

Limit of Quantitation (LOQ). For quantitative assays, the lowest concentration at which the identity and concentration of the analyte (*e.g.,* drug or drug metabolite) can be accurately established.

* * * * *

Non-negative specimen. A specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), or invalid.

* * * * *

Oral fluid specimen. A specimen that is collected from an employee's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands. An oral fluid specimen is considered to be a direct observation collection for all purposes of this part.

* * * * *

Primary specimen. In drug testing, the specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of specimen validity testing. The primary specimen is the portion of the donor's subdivided specimen designated as the primary (''A'') specimen by the collector to distinguish it from the split (''B'') specimen, as defined in this section.

* * * * *

Reconfirmed. The result reported for a split (Bottle B) specimen when the second HHS-certified laboratory corroborates the original result reported for the primary (Bottle A) specimen.

* * * * *

Shipping container. A container that is used for transporting and protecting specimen bottles and associated

documents from the collection site to the laboratory.

Specimen. Fluid, breath, or other material collected from an employee at the collection site for the purpose of a drug or alcohol test.

Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold a primary (''A'') or split (''B'') specimen during transportation to the laboratory. In the context of oral fluid testing, it may be referred to as a ''vial,'' ''tube,'' or ''bottle.''

Split specimen. In drug testing, the specimen that is sent to a first laboratory and stored with its original seal intact, and which is transported to a second laboratory for retesting at the employee's request following MRO verification of the primary specimen as positive, adulterated or substituted.

Split specimen collection. A collection in which the single specimen collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

SSN or Employee ID No. This number serves as a unique identifier that must be used on the Federal Drug Testing Custody and Control Form (CCF) or Alcohol Testing Form (ATF) for a donor, on the MRO's reports, on SAP reports, or on other documents that are required under this part. For all purposes of this part, this term means: only the Commercial Driver's License (CDL) Number and State of issuance for drivers tested under the authority of the Federal Motor Carrier Safety Administration (FMCSA); and, for all drivers and other safety-sensitive employees tested under the authority of the other DOT agencies, this can be the individual's actual Social Security Number, a unique identifier issued by the employer, a State-issued identification card number, a State-issued driver's license number (including a CDL number) or any other State-issued or federally-issued identification number.

* * * * *

Substituted specimen. An employee's specimen not consistent with a normal human specimen, as determined by HHS (*e.g.,* a urine specimen, with creatinine and specific gravity values that are so diminished, or so divergent that they are not consistent with normal human urine).

* * * * *

Undiluted (neat) oral fluid. An oral fluid specimen to which no other solid or liquid has been added. For example: A collection device that uses a diluent (or other component, process, or method that modifies the volume of the testable specimen) must collect at least 1 mL of undiluted (neat) oral fluid.

Urine specimen. Urine collected from an employee at the collection site for the purpose of a drug test.

* * * * *

■ 9. Amend § 40.13 by revising paragraphs (b), (c), and (d), redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively, adding new paragraph (e), and adding paragraph (h).

The revisions and additions to read as follows:

§ 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?

* * * * *

(b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. When conducting a urine DOT drug test, you must discard any excess urine left over from a DOT test and collect a separate urine void for the subsequent non-DOT test.

(c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT specimens other than those tests specifically authorized by this part or DOT agency regulations. For example, you must not test a DOT specimen for additional drugs. In addition, a laboratory is prohibited from making a DOT specimen available for a DNA test or other types of specimen identity testing.

(d) When a DOT urine drug test collection is conducted as part of a physical examination required by DOT agency regulations, it is permissible to conduct medical tests related to this physical examination (*e.g.,* for glucose) on any specimen remaining in the collection container after the DOT portion has been sealed into the specimen bottles.

(e) A non-DOT drug or alcohol test administered, as part of a physical examination, is not a DOT drug or alcohol test for purposes of this part and/or related DOT agency drug and alcohol testing rules, if that test was performed to determine if an employee is medically qualified for a license or certificate. Consequently, the results of such a test do not have consequences under this part.

* * * * *

(h) No one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee, as defined by the DOT agency regulations.

* * * * *

■ 10. In § 40.14 by revising paragraph (b) and adding paragraph (k) to read as follows:

§ 40.14 What information must employers provide to collectors?

* * * * *

(b) SSN or Employee ID No.'';

* * * * *

(k) Specimen type to be collected (*i.e.,* oral fluid or urine).

■ 11. Amend § 40.21 by:

■ a. Removing the word ''and'' from the end of paragraph (c)(2)(vii)(B);

■ b. Redesignating paragraph (c)(2)(vii)(C) as paragraph (c)(2)(vii)(D); and

■ c. Adding a new paragraph (c)(2)(vii)(C).

The addition reads as follows:

§ 40.21 May an employer stand down an employee before the MRO has completed the verification process?

* * * * *

(c) * * *

(2) * * *

(vii) * * *

(C) For a verified negative result, the employee will not be required to submit an alternate specimen for the same testing action. For a cancelled result, the employee could be required to submit an alternate specimen on a re-collection; and

* * * * *

■ 12. Amend § 40.23 by revising paragraphs (f) introductory text and (f)(1) and (5) to read as follows:

§ 40.23 What actions do employers take after receiving verified test results?

* * * * *

(f) As an employer who receives a drug test result indicating that the employee's test was cancelled because it was invalid and that a second collection must take place under direct observation—

(1) You must immediately direct the employee to provide a new specimen under direct observation (either an oral fluid specimen or a urine specimen under direct observation).

* * * * *

(5) You must ensure that the collector conducts the collection under direct observation (either an oral fluid specimen or a urine specimen under direct observation).

* * * * *

■ 13. Amend § 40.25 by revising paragraph (a) to read as follows:

§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a)(1) Yes, as an employer, you must, after obtaining an employee's written

consent, request the information about the employee listed in paragraphs (b) through (j) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (*i.e.,* a new hire, an employee transferring into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(2) If you are an employer regulated by FMCSA, you must comply with the requirements of this section by using the FMCSA's Drug and Alcohol Clearinghouse in accordance with 49 CFR 382.71(a). In addition, you must continue to comply with the requirements of this § 40.25 when checking an employee's testing history with employers regulated by a DOT operating administration other than FMCSA.

(3) If you are an employer regulated by FMCSA, with a prospective employee subject to drug and alcohol testing with a DOT agency other than FMCSA, you must continue to request the information about the employee listed in paragraphs (b) through (j) of this section. For example, if you are an employer regulated by both FMCSA and PHMSA, and you are hiring an employee to perform functions regulated by both DOT agencies, then you must query FMCSA's Clearinghouse to satisfy FMCSA's requirements and you must request the information listed in paragraphs (b) through (j) of this section to satisfy PHMSA's requirements.

* * * * *

§ 40.26 [Amended]

■ 14. Amend § 40.26 in the second sentence by removing ''Appendix H'' and adding in its place ''appendix J''.

§ 40.29 [Removed]

■ 15. Remove § 40.29.

■ 16. Amend § 40.31 by:

■ a. Revising the section heading;

■ b. Revising paragraph (b);

■ c. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e);

■ d, Adding new paragraph (c);

■ e. Revising newly redesignated paragraph (d); and

■ f. Adding paragraph (f).

The revisions and additions read as follows:

§ 40.31 Who may collect specimens for DOT drug testing?

* * * * *

(b) A urine collector must meet training requirements of § 40.33.

(c) An oral fluid collector must meet the training requirements of § 40.35.

(d) To avoid the appearance of a conflict of interest, if you are the immediate supervisor of the employee being tested, you must not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.

* * * * *

(f) Employees are not permitted to be their own collector.

(1) An employee who is a qualified collector is not permitted to be their own collector; another qualified collector must perform the collection in accordance with this part.

(2) To avoid a potential conflict of interest, a collector must not be related to the employee being tested (*e.g.,* spouse, ex-spouse, relative) or a close personal friend.

■ 17. Amend § 40.33 by revising the section heading, introductory text, and paragraph (f) introductory text to read as follows:

§ 40.33 What training requirements must a collector meet for urine collection?

To be permitted to act as a urine collector in the DOT drug testing program, you must meet each of the requirements of this section:

* * * * *

(f) *Error correction training.* If you make a mistake in the collection process that causes a test to be cancelled (*i.e.,* a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining. Errors that cause cancellation but occur outside the collection process (*e.g.,* when a specimen is crushed or otherwise damaged during the transportation process, or is lost in transit), the cancellation would not be the result of an error by the collector during the collection process and does not require the collector to be retrained.

* * * * *

§ 40.35 [Redesignated as § 40.36]

■ 18. Redesignate § 40.35 as § 40.36.

■ 19. Add a new § 40.35 to read as follows:

§ 40.35 What training requirements must a collector meet for oral fluid collection?

To be permitted to act as an oral fluid collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) *Basic information.* You must be knowledgeable about this part, the current ''DOT Oral Fluid Specimen Collection Procedures Guidelines,'' and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE, Washington DC, 20590, 202–366–3784, or on the ODAPC website (*https://www.transportation.gov/odapc*). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: *https://www.transportation.gov/odapc/get-odapc-email-updates.*

(b) *Qualification training.* You must receive qualification training meeting the requirements of this paragraph (b). Qualification training must provide instruction on the following subjects:

(1) Training on the testing procedures of this part;

(2) Training to proficiency in the operation of the particular oral fluid collection device(s) you will be using.

(3) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;

(4) ''Problem'' collections (*e.g.,* situations like ''dry mouth'' and attempts to tamper with a specimen);

(5) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(6) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(c) *Initial proficiency demonstration.* Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections for each device you will use.

(1) The five mock collections for each device must include one uneventful collection scenario, one insufficient specimen quantity scenario; one scenario in which the employee has something in their mouth that might interfere with the collection; one scenario in which the employee attempts to tamper with the specimen; and one scenario in which the employee refuses to sign the CCF. For each of the five mock collections, the collector must check the expiration date of the device, show it to the employee, and record the date on the CCF used. The collector must ensure, when applying the labels, they do not cover the expiration dates.

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between you and the qualified collector, who must attest in writing that the mock collections are ''error-free.'' This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—

(i) Regularly conducting DOT drug test collections for a period of at least one year;

(ii) Conducting collector training under this part for at least one year; or

(iii) Successfully completing a ''train the trainer'' course.

(d) *Schedule for qualification training and initial proficiency demonstration.* You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c).

(f) *Error correction training.* If you make a mistake in the collection process that causes a test to be cancelled (*i.e.,* a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were ''error-free.''

(g) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

§ 40.37 [Removed]

■ 20. Remove § 40.37.

■ 21. Revise the heading for subpart D to read as follows:

Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine and Oral Fluid Collections

§ 40.41 [Redesignated as § 40.42]

■ 22. Redesignate § 40.41 as § 40.42.

§ 40.45 [Redesignated as § 40.40]

■ 23. Redesignate § 40.45 as § 40.40.

■ 24. Amend newly redesignated § 40.40 by:

■ a. Revising the section heading and paragraphs (a) and (b), (c) introductory text, and (c)(1) through (4); and

■ b. Removing the words ''social security number (SSN) or other employee identification (ID) number'' and adding in their place ''SSN or Employee ID No.'' in paragraph (d).

The revisions read as follows:

§ 40.40 What form is used to document a DOT collection?

(a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every collection required by the DOT drug testing program. You may view this form on the Department's website (*https://www.transportation.gov/odapc*) or the HHS website (*https://www.workplace.samhsa.gov*).

(b) You must not use a non-Federal form or an expired CCF to conduct a DOT collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF.

(c) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:

(1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.

(2) The CCF must include the names, addresses, telephone numbers and any other appropriate contact information (*e.g.,* an email address of the employer and the MRO), including the DER's name and contact information. All of this information must be preprinted, typed, or handwritten. Fax numbers may be included but are not required. The MRO information must include the physician's name and address, as opposed to only a generic clinic, health care organization, company name, or post office box. This information is required, and an employer, collector, service agent or any other party is prohibited from omitting it. In addition, a C/TPA's name, address, telephone and fax numbers, and any other appropriate contact information should be included, but is not required. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone and fax numbers, and any other appropriate contact information.

(3) As an employer you may preprint the box in Step 1–D of the CCF for the DOT agency under whose authority the test will occur.

(4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event. If a collection takes place at a clinic, the actual address of the clinic should be used, not a corporate address of the collection company. If the collection takes place onsite at the employer, the employer's address must be noted as the collection site address. If the collection takes place in a ''mobile unit'' or at an accident site, the collector must enter the actual location address of the collection or as near an approximation as possible. The collector must ensure that the required collector telephone number is the number that the laboratory, MRO, or employer may use to directly contact the individual collector and/or the collector's supervisor during the collection site's business hours. The collector must not provide a number for a call center.

* * * * *

§ 40.47 [Redesignated as § 40.41]

■ 25. Redesignate § 40.47 as § 40.41.

§ 40.41 [Amended]

■ 26. Amend newly redesignated § 40.41 in paragraph (a) by removing the word ''urine'' wherever it appears.

■ 27. Amend § 40.43 by revising the section heading to read as follows:

§ 40.43 What steps must operators of collection sites and collectors take to protect the security and integrity of urine collections?

* * * * *

§ 40.49 [Redesignated as § 40.44]

■ 28. Redesignate § 40.49 as § 40.44.

§ 40.51 [Redesignated as § 40.45]

■ 29. Redesignate § 40.51 as § 40.45.

■ 30. Add §§ 40.47, 40.48, 40.49, and 40.51 to subpart D to read as follows:

* * * * *

Sec.

40.47 Where does an oral fluid collection for a DOT drug test take place?
40.48 What steps must operators of collection sites and collectors take to protect the security and integrity of oral fluid collections?
40.49 What materials are used to collect oral fluid specimens?
40.51 What materials are used to send oral fluid specimens to the laboratory?

* * * * *

§ 40.47 Where does an oral fluid collection for a DOT drug test take place?

(a) An oral fluid collection for a DOT drug test must take place in a collection site meeting the requirements of this section.

(b) If you are operating an oral fluid collection site:

(1) You must ensure that it meets the security requirements of § 40.48;

(2) The site may be a permanent or temporary facility located either at the work site or at a remote site;

(3) The site may be in a medical facility, a mobile facility (*e.g.,* a van), a dedicated collection facility, or any other location meeting the requirements of this section; and

(4) You must have all necessary personnel, materials, equipment, and facilities that include privacy and supervision to provide for the collection, temporary storage, and shipping of specimens to a laboratory, and a suitable clean surface for writing.

(c) If a collection site is not accessible and there is an immediate requirement to collect an oral fluid specimen (*e.g.,* an accident investigation), another site may be used for the collection, if the collection is performed by a collector who has been trained to collect oral fluid specimens in accordance with this part and the manufacturer's procedures for the collection device.

§ 40.48 What steps must operators of collection sites and collectors take to protect the security and integrity of oral fluid collections?

(a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.

(b) As a collector, you must do the following before each collection to deter tampering with specimens:

(1) Ensure that access to collection materials and specimens is effectively restricted;

(2) Ensure that undetected access (*e.g.,* through a door not in your view) is not possible; and

(3) Ensure the security of the facility during the collection process to maintain privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.

(c) As a collector, you must take the following additional steps to ensure security during the collection process:

(1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a ''dry mouth'' situation (*see* § 40.72(b)(1)), you may conduct a collection for another employee as long as the employee with ''dry mouth'' remains supervised.

(2) To the greatest extent practicable, keep an employee's collection container within view of both you and the employee between the time the employee has provided the oral fluid specimen and the specimen is sealed.

(3) Ensure you are the only person in addition to the employee who handles the specimen before it is sealed with tamper-evident seals.

(4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.

(5) Maintain personal control over each specimen and CCF throughout the collection process.

(d) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which oral fluid specimens are collected or stored.

(1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (*e.g.,* employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (d).

(2) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.

(3) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.

(e) If you are operating a collection site, you must minimize the number of persons handling specimens.

§ 40.49 What materials are used to collect oral fluid specimens?

For each DOT drug test, you must use a collection device meeting the requirements of appendix B of this part.

§ 40.51 What materials are used to send oral fluid specimens to the laboratory?

(a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from damage in the transport of specimens from the collection site to the laboratory.

(b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

■ 31. Revise the heading for subpart E to read as follows:

Subpart E—Specimen Collections

■ 32. Amend § 40.61 by revising the section heading and paragraphs (a), (b)(1) introductory text, (b)(3) and (4), (e), and (f)(5)(i) to read as follows:

§ 40.61 What are the preliminary steps in the drug testing collection process?

* * * * *

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing, the DER must determine whether the employee has refused to test (*see* §§ 40.191(a)(1) and 40.355(i)). In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing (other than for a pre-employment test) and the employee does not appear, the C/TPA must determine whether the employee has refused to test (*see* §§ 40.191(a)(1) and 40.355(j)).

(b) * * *

(1) If the employee is also going to take a DOT alcohol test, you must ensure, to the greatest extent practicable, that the alcohol test is completed before the drug testing collection process begins.

* * * * *

(3) You must not collect a specimen from an unconscious employee to conduct a drug test under this part.

(4) You must not catheterize a conscious employee for purposes of a urine test. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner. If an employee normally voids through self-catheterization, but

declines to do so for the urine test, the collector should notify the DER of the circumstances, so that the actual employer can determine whether the situation constitutes a refusal to test by the employee.

* * * * *

(e) Explain the basic collection procedure to the employee, and notify the employee that instructions for completing the CCF can be found at the HHS (*https://www.samhsa.gov/workplace*) and DOT (*https://www.transportation.gov/odapc*) websites.

(f) * * *

(5) * * *

(i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, either conduct a directly observed urine collection using direct observation procedures (*see* § 40.67) or an oral fluid specimen collection, make a note on the CCF and continue with collection process; or

* * * * *

■ 33. Amend § 40.63 by revising paragraph (a) to read as follows:

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

* * * * *

(a) Ensure all items under Step 1 of the CCF are complete and accurate (*e.g.,* if Step 1.D is not checked, put a check mark for the ''Specify DOT Agency'' under the authority of which the test will take place; if the address where the collection is actually taking place is not in Step 1.G, update that.)

* * * * *

■ 34. Amend § 40.65 by revising the section heading and paragraphs (b)(5) and (6), and (c)(1) to read as follows:

§ 40.65 What does the collector check for when the employee presents a urine specimen?

* * * * *

(b) * * *

(5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new urine collection using direct observation procedures (*see* § 40.67) or an oral fluid collection.

(6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation (including oral fluid) and send the two sets of specimens to their respective laboratories. This is true even in a case in which the original specimen has insufficient volume and the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

* * * * *

(c) * * *

(1) If it is apparent from this inspection that the employee has tampered with the specimen (*e.g.,* blue dye in the specimen, excessive foaming when shaken, or smell of bleach), you must immediately conduct a new urine collection using direct observation procedures (*see* § 40.67) or an oral fluid collection.

* * * * *

■ 35. Amend § 40.67 by:

■ a. Revising the section heading and paragraph (a) introductory text;

■ b. Adding paragraph (a)(4);

■ c. Removing ''paragraphs (a) and (b)'' and adding ''paragraph (a)'' in its place in paragraph (c)(1);

■ d. Revising paragraphs (c)(3) and (4);

■ e. Adding paragraph (c)(5);

■ f. Revising paragraph (d)(2);

■ f. Removing ''§ 40.67(b)'' and adding in its place ''paragraphs (c)(2) through (4) of this section'' in paragraph (e)(2); and

■ g. Revising paragraph (g).

The revisions and additions read as follows:

§ 40.67 When and how is a directly observed urine collection conducted?

(a) As an employer, you must direct an immediate collection under direct observation with no advance notice to the employee, if:

* * * * *

(4) You realize a collection under direct observation was required but was not conducted or the service agent informs you that a direct observation should have been collected but was not (*see* paragraph (n) of this section).

(c) * * *

(3) The temperature on the original specimen was out of range (*see* § 40.65(b)(5));

(4) The original specimen appeared to have been tampered with (*see* § 40.65(c)(1)); or

(5) The test reason is return-to-duty or follow-up.

(d) * * *

(2) As the collector, you must explain to the employee the reason, if known, under this part for a directly observed collection.

* * * * *

(g) As the collector, you must ensure that the observer is the same gender as the employee.

(1) You must never permit an opposite gender person to act as the observer.

(2) The observer can be a different person from the collector and need not be a qualified collector.

(3) If a same gender collector cannot be found or in circumstances of nonbinary or transgender employees:

(i) If the employer has a standing order to allow oral fluid testing in such situations, the collector will follow that order;

(ii) If there is no standing order from the employer, the collector must contact the DER and either conduct an oral fluid test if the collection site is able to do so, or send the employee to a collection site acceptable to the employer for the oral fluid test.

* * * * *

■ 36. Amend § 40.69 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a) through (g) as paragraphs (b) through (h);

■ c. Adding new paragraph (a); and

■ d. Revising newly redesignated paragraph (e).

The revisions and addition read as follows:

§ 40.69 How is a monitored urine collection conducted?

(a) As stated in § 40.42(f)(2), if you are conducting a urine collection in a multi-stall restroom and you cannot secure all sources of water and other substances that could be used for adulteration and substitution, you must conduct a monitored collection. This is the only circumstance in which you must conduct a monitored collection.

* * * * *

(e) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation. *See* §§ 40.63(e), 40.65(c), and 40.67(c)(2)(3)).

* * * * *

■ 37. Amend § 40.71 by revising the section heading and paragraph (b)(1) to read as follows:

§ 40.71 How does the collector prepare the urine specimen?

* * * * *

(b) * * *

(1) After the collection, check the box on the CCF (Step 2) indicating that this was a ''Urine'' and ''Split'' specimen collection.

* * * * *

§ 40.73 [Redesignated as § 40.79]

■ 38. Redesignate § 40.73 as § 40.79.

■ 39. Add new §§ 40.72 through 40.74 to read as follows:

* * * * *

Sec.

40.72 What steps does the collector take in the collection process before the employee provides an oral fluid specimen?
40.73 How is an oral fluid specimen collected?
40.74 How does the collector prepare the oral fluid specimens?

* * * * *

§ 40.72 What steps does the collector take in the collection process before the employee provides an oral fluid specimen?

(a) The collector requests that the employee open the employee's mouth, and the collector inspects the oral cavity to ensure that it is free of any items that could impede or interfere with the collection of an oral fluid specimen (*e.g.,* candy, gum, food, or tobacco) or could be used to adulterate, substitute, or alter the specimen.

(1) If the collector finds indication(s) of anything identified above, the collector will ask the employee to lift their tongue and/or separate their cheek from their gum to permit full inspection. If this occurs, the employee may cleanse his or her hands, but must not decline the collector's request for further inspection.

(2) If the employee claims that he or she has a medical condition that prevents opening his or her mouth for inspection, the collector follows the procedure described in § 40.193(a).

(3) If the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to adulterate, substitute, or alter the specimen, the collector must terminate the collection, note the circumstances in the Remarks section of the CCF, and report the circumstances to the DER, so that the employer can decide whether to deem the situation a refusal in accordance with § 40.191(a).

(b) If an item is present that might impede or interfere with the collection of an oral fluid specimen, the collector must request the employee remove the item.

(1) If the employee removes any item that could impede or interfere with the collection of an oral fluid specimen, the employee has abnormally colored saliva, or the employee claims to have ''dry mouth,'' then the collector must give the employee water, up to 8 ounces, to rinse their mouth. The employee may drink the water. The collector must then wait 10 minutes before beginning the specimen collection.

(2) If the employee refuses to remove the item or rinse, the collector must terminate the collection, note the circumstances in the Remarks section of the CCF, and report the information to the DER to test as described in § 40.191(a)(8) (failure to cooperate), so that the employer can decide whether to deem the situation a refusal.

(c) If there is nothing of concern in the oral cavity and no ''dry mouth'' condition, the collector starts a 10-minute wait period and proceeds with the steps below before beginning the specimen collection as described in § 40.73.

(d) During the 10-minute wait period:

(1) Review with the employee the procedures required for a successful oral fluid specimen collection as stated in the manufacturer's instructions for the specimen collection device.

(2) Complete all items under Step 1 of the CCF, and for clarification:

(i) In Step 1.D of the CCF, the collector must put a check mark for the ''Specify DOT Agency'' under whose authority the test will take place.

(ii) In Step 1.G of the CCF for the ''Collection Site Address'', the collector must provide the address where the collection took place.

(3) The collector will provide, or the employee may select, a specimen collection device that is clean, unused, and wrapped/sealed in original packaging.

(i) The collector will check the expiration date on the device or the package containing the device and show it to the employee.

(ii) The collector must not use the device after its expiration date.

(iii) The collector must open the specimen collection device in view of the employee.

(4) The collector will complete Step 2 of the CCF.

(i) Check ''Oral Fluid'',

(ii) For ''Oral Fluid: Split Type'' check ''Subdivided'', and

(iii) Check ''Each Device Within Expiration Date?'' after ensuring the device is within its expiration date.

(5) The collector will enter the Split Specimen Device Expiration Date in Step 4 of the CCF. Since the collector will use one oral fluid device that will collect a single specimen, which is then subdivided in the presence of the donor, only one entry in Step 4 is to be made for the device expiration date.

(6) The collector must instruct the employee to use hand sanitizer or wash and dry his or her hands.

(e) To the greatest extent practicable, the collector must keep the employee's unwrapped collection device within view of both the collector and the employee, between the time the employee has provided a specimen and the specimen is sealed.

§ 40.73 How is an oral fluid specimen collected?

(a) The collector must be present and maintain visual contact with the employee during the procedures outlined in this section.

(b) The collector must note any unusual behavior or appearance of the employee on the CCF. If the collector detects any conduct that clearly indicates an attempt to tamper with a specimen (*e.g.,* an attempt to bring into the collection site an adulterant or oral fluid substitute), the collector must terminate the collection and report the information to the DER so that the employer can decide whether to deem the situation a refusal.

(c) The employee and collector must complete the specimen collection in accordance with the manufacturer's instructions for the collection device.

(1) Under the observation of the collector, the employee is responsible for positioning the specimen collection device for collection.

(2) The collector must ensure the collection is performed correctly (*i.e.,* using the oral fluid device in the manner described by its manufacturer), that the collection device is working properly, and that a sufficient specimen volume is collected.

(3) If the employee states that he or she is unable to provide an oral fluid specimen or provides an insufficient specimen during the collection process, the collector must continue to make one attempt to collect, after an insufficient specimen, the collector follows the procedure in § 40.193.

(4) The collector must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering. If it is apparent from this inspection that the employee has tampered with the specimen, the collector must conduct a new collection.

(i) Document any unusual characteristics referenced above in the Remarks section of the CCF.

(ii) Proceed with obtaining the new oral fluid specimen from the donor. Note on the new CCF that this is another collection for the same testing event (*i.e.,* Document in the remarks section that this is Specimen 2 of 2 and include the Specimen ID number of the other specimen). Make the same notation on the CCF of the suspect specimen.

§ 40.74 How does the collector prepare the oral fluid specimens?

(a) The collector follows the manufacturer's instructions to package the split specimen collections.

(b) A volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as ''Bottle

A'', and a volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as ''Bottle B'', or an otherwise sufficient amount of oral fluid is collected to permit an HHS-certified laboratory to analyze the specimen(s).

(c) In the presence of the employee, the collector places a tamper-evident seal from the CCF over the cap of each specimen container, taking care not to obstruct the expiration date on the collection containers. The collector must record the date of the collection on the tamper-evident seals, after they are affixed to the specimen containers.

(d) The collector instructs the employee to initial the tamper-evident seals on each specimen container. If the employee declines to do so, the collector must note this in the ''Remarks'' line of the CCF (Step 2) and complete the collection process.

§§ 40.75–40.78 [Reserved]

■ 40. Add reserved §§ 40.75 through 40.78 to subpart E.

■ 41. Amend newly redesignated § 40.79 by revising paragraph (a)(1) to read as follows:

§ 40.79 How is the collection process completed?

(a) * * *

(1) Direct the employee to read and sign the certification statement on Copy 2 of the CCF and provide all information required in Step 5. If the employee declines to sign the CCF or to provide any of the required information, you must note this in the ''Remarks'' line (Step 2) of the CCF and complete the collection. If the employee declines to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.

* * * * *

§ 40.81 [Amended]

■ 42. Amend § 40.81 in paragraph (a) by removing the words ''all testing'' and adding in their place the words ''each specimen testing methodology performed''.

■ 43. Amend § 40.83 by:

■ a. Removing the word ''urine'' in paragraph (b);

■ b. Removing the word ''urine'' and adding in its place the word ''specimen'' in paragraph (c)(7);

■ c. Adding paragraphs (c)(8) and (9);

■ d. Adding the word ''urine'' before the word ''specimen'' in paragraph (f) introductory text;

■ e. Removing ''40.45(a)'' and adding in its place ''40.40(a)'' in paragraph (g) introductory text;

■ f. Removing the word ''urine'' and adding in its place the word ''specimen'' in paragraphs (h)(1)(i), (iii), and (iv); and

■ g. Removing ''(g)(1)'' and adding in its place ''(h)(1)'' in paragraph (h)(2).

§ 40.83 How do laboratories process incoming specimens?

* * * * *

(c) * * *

(8) For an oral fluid collection, the collector used an expired device at the time of collection.

(9) For an oral fluid collection, if the collector failed to enter the expiration date in Step 4 of the CCF and the laboratory is unable to determine the expiration date by inspecting Bottles A and B.

* * * * *

§ 40.85 [Redesignated as § 40.82]

■ 44. Redesignate § 40.85 as § 40.82.

§ 40.99 [Redesignated as § 40.84]

■ 45. Redesignate § 40.99 as § 40.84.

§ 40.87 [Redesignated as § 40.85]

■ 46. Redesignate § 40.87 as § 40.85.

■ 47. Amend newly redesignated § 40.85 by revising the section heading and footnote 2 to read as follows:

§ 40.85 What are the cutoff concentrations for urine drug tests?

* * * * *

[2] An immunoassay must be calibrated with a target analyte.

* * * * *

§ 40.89 [Redesignated as § 40.86]

■ 48. Redesignate § 40.89 as § 40.86.

■ 49. Amend newly redesignated § 40.86 by revising the section heading to read as follows:

§ 40.86 What is urine validity testing, and are laboratories required to conduct it?

* * * * *

§ 40.91 [Redesignated as § 40.87]

■ 50. Redesignate § 40.91 as § 40.87.

■ 51. Amend newly redesignated § 40.87 by revising the section heading, and in the introductory text, removing ''§ 40.89'' and adding in its place ''§ 40.86''.

The revision reads as follows:

§ 40.87 What validity tests must laboratories conduct on primary urine specimens?

* * * * *

§ 40.93 [Redesignated as § 40.88]

■ 52. Redesignate § 40.93 as § 40.88.

■ 53. Amend newly redesignated § 40.88 by revising the section heading to read as follows:

§ 40.88 What criteria do laboratories use to establish that a urine specimen is dilute or substituted?

* * * * *

§ 40.95 [Redesignated § 40.89]

■ 54. Redesignate § 40.95 as § 40.89.

■ 55. Amend newly redesignated § 40.89 by revising the section heading to read as follows:

§ 40.89 What are the adulterant cutoff concentrations for initial and confirmation urine tests?

* * * * *

§ 40.96 [Redesignated as § 40.90]

■ 56. Redesignate existing § 40.96 as § 40.90.

■ 57. Amend newly redesignated § 40.90 by revising the section heading to read as follows:

§ 40.90 What criteria do laboratories use to establish that a urine specimen is invalid?

* * * * *

■ 58. Add new §§ 40.91 through 40.93 to read as follows:

* * * * *

Sec.

40.91 What are the cutoff concentrations for oral fluid drug tests?
40.92 What is oral fluid validity testing, and are laboratories required to conduct it?
40.93 What validity tests must laboratories conduct on primary oral fluid specimens?

* * * * *

§ 40.91 What are the cutoff concentrations for oral fluid drug tests?

As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests for oral fluid specimens. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

TABLE 1 TO § 40.91—ORAL FLUID TESTING CUTOFF CONCENTRATIONS

Initial test analyte	Initial test cutoff [1]	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana (THC) [2]	4 ng/mL [3]	THC	2 ng/mL.
Cocaine/Benzoylecgonine	15 ng/mL	Cocaine	8 ng/mL.
		Benzoylecgonine	8 ng/mL.
Codeine/Morphine	30 ng/mL	Codeine	15 ng/mL.
		Morphine	15 ng/mL.
Hydrocodone/Hydromorphone	30 ng/mL	Hydrocodone	15 ng/mL.
		Hydromorphone	15 ng/mL.
Oxycodone/Oxymorphone	30 ng/mL	Oxycodone	15 ng/mL.
		Oxymorphone	15 ng/mL.
6-Acetylmorphine	4 ng/mL [3]	6-Acetylmorphine	2 ng/mL.
Phencyclidine	10 ng/mL	Phencyclidine	10 ng/mL.
Amphetamine/Methamphetamine	50 ng/mL	Amphetamine	25 ng/mL.
		Methamphetamine	25 ng/mL.
MDMA [4]/MDA [5]	50 ng/mL	MDMA	25 ng/mL.
		MDA	25 ng/mL.

[1] For grouped analytes (*i.e.,* two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (*i.e.,* with concentrations equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

[2] An immunoassay must be calibrated with the target analyte.

[3] *Alternate technology (THC and 6-AM):* The confirmatory test cutoff must be used for an alternate technology initial test that is specific for the target analyte (*i.e.,* 2 ng/mL for THC, 2 ng/mL for 6-AM).

[4] Methylenedioxymethamphetamine (MDMA).

[5] Methylenedioxyamphetamine (MDA).

§ 40.92 What is oral fluid validity testing, and are laboratories required to conduct it?

(a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human oral fluid. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the oral fluid, if the oral fluid was altered.

(b) If a specimen exhibits abnormal characteristics (*e.g.,* unusual odor or color), causes reactions or responses characteristic of an adulterant during initial or confirmatory drug tests (*e.g.,* non-recovery of internal standard, unusual response), or contains an unidentified substance that interferes with the confirmatory analysis, then you may conduct validity testing.

(c) If you determine that the specimen is invalid and HHS guidelines direct you to contact the MRO, you must contact the MRO and together decide if testing the primary specimen by another HHS-certified laboratory would be useful in being able to report a positive or adulterated test result.

§ 40.93 What validity tests must laboratories conduct on primary oral fluid specimens?

As a laboratory, if you conduct validity testing under § 40.92, you must conduct it in accordance with the requirements of this section.

(a) You may test for a biomarker such as albumin or immunoglobulin G (IgG) or a test for a specific adulterant.

(b) You must follow the applicable HHS requirements for any additional validity testing.

■ 59. Revise § 40.97 to read as follows:

§ 40.97 What do laboratories report and how do they report it?

(a) As a laboratory, when reporting a result of any kind, you must report the specimen type.

(b) You must also report the results for each primary specimen, which will fall into one of the following three categories. As a laboratory, you must report the actual results (and not the categories):

(1) *Category 1: Negative results.* As a laboratory, when you find a specimen to be negative, you must report the test result as being one of the following, as applicable:

(i) Negative, or

(ii) For urine only, negative-dilute, with numerical values for creatinine and specific gravity.

(2) *Category 2: Non-negative results.* As a laboratory, when you find a specimen to be non-negative, you must report the test result as being one or more of the following, as applicable:

(i) Positive, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s).

(ii) Adulterated, with adulterant(s) noted, with confirmatory test values (when applicable), and with remarks(s);

(iii) For urine only, positive-dilute, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s) and with numerical values for creatinine and specific gravity;

(iv) For urine only, substituted, with confirmatory test values for creatinine and specific gravity; or

(v) For urine only, invalid result, with remark(s). Laboratories will report actual values for pH results.

(vi) For oral fluid only, invalid result, with remark(s). Laboratories must report numerical values of the specimen validity test results that support a specimen reported as invalid.

(3) *Category 3: Rejected for testing.* As a laboratory, when you reject a specimen for testing, you must report the result as being Rejected for Testing, with remark(s).

(c) As a laboratory, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or a service agent (*e.g.,* a C/TPA).

(1) Negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF which has been signed by the certifying scientist, or you may provide the laboratory

results report electronically (*i.e.,* computer data file).

(i) If you elect to provide the laboratory results report, you must include the following elements, as a minimum, in the report format:

(A) Laboratory name and address;

(B) Employer's name (you may include I.D. or account number);

(C) Medical review officer's name;

(D) Specimen I.D. number;

(E) SSN or Employee ID from Step 1C of the CCF, if provided;

(F) Reason for test, if provided;

(G) Collector's name and telephone number;

(H) Date of the collection;

(I) For oral fluid only, collection device expiration date;

(J) Date received at the laboratory;

(K) Date certifying scientist released the results;

(L) Certifying scientist's name;

(M) Results (*e.g.,* positive, adulterated) as listed in paragraph (a) of this section; and

(N) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.

(ii) You may release the laboratory results report only after review and approval by the certifying scientist. It must reflect the same test result information as contained on the CCF signed by the certifying scientist. The information contained in the laboratory results report must not contain information that does not appear on the CCF.

(iii) The results report may be transmitted through any means that ensures accuracy and confidentiality. You, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage (*e.g., see* § 40.351).

(2) Non-negative and Rejected for Testing results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, you may provide the electronic laboratory results report following the format and procedures set forth in paragraphs (b)(1)(i) and (ii) of this section.

(d) In transmitting laboratory results to the MRO, you, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax or other electronic means, the electronic communication must be accessible only to authorized individuals.

(e) You must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.

(f)(1) You must provide quantitative values for confirmed positive drug test results to the MRO.

(2) You must provide numerical values that support the adulterated (when applicable) or substituted result, without a request from the MRO.

(3) You must also provide the MRO numerical values for creatinine and specific gravity for the negative-dilute urine test result, without a request from the MRO.

(g) You must provide quantitative values for confirmed positive morphine and/or codeine urine results at or below 15,000 ng/mL, and for confirmed positive morphine or codeine oral fluid results at or below 150 ng/mL.

■ 60. Amend § 40.111 by revising paragraphs (a) introductory text and (d) to read as follows:

§ 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

(a) As a laboratory, you must transmit an aggregate statistical summary, by employer, of the data listed in appendix D of this part with respect to each specimen type for which you conduct tests to the employer on a semi-annual basis.

* * * * *

(d) As a laboratory, you must transmit an aggregate statistical summary listed in appendix E of this part for each specimen type for which you conduct testing to DOT on a semi-annual basis. The summary must be sent by January 31 of each year for July 1 through December 31 of the prior year. It must be sent by July 31 of each year for January 1 through June 30 of the current year. If you withdraw or are removed from NLCP's laboratory certification during a reporting period, you must provide the aggregate statistical summary to the DOT-regulated employers and to ODAPC for the last reporting period in which you conducted DOT-regulated testing.

§ 40.121 [Amended]

■ 61. Amend § 40.121 in paragraph (c)(1)(i) by removing the word ''urine''.

§ 40.123 [Amended]

■ 62. Amend § 40.123 in paragraph (c) by removing the words ''invalid drug tests results'' and adding in their place ''invalid results''.

§ 40.127 [Amended]

■ 63. Amend § 40.127 in the second sentence of paragraph (g)(2) by adding the words ''of all specimen types combined'' before the words ''in any quarter''.

§ 40.129 [Amended]

■ 64. Amend § 40.129 in paragraph (a) introductory text by removing the words ''invalid drug tests'' and adding in their place ''invalid results'', in paragraph (b) by removing the words ''text cancelled'', and in paragraph (d) by removing ''drug test report'' and adding ''result'' in its place.

§ 40.135 [Amended]

■ 65. Amend § 40.135 in paragraph (d) introductory text by removing the word ''test'' after the word ''invalid'' and adding in its place the word ''result''.

■ 66. Amend § 40.139 by revising paragraph (b) and in paragraph (c) introductory text by removing the word ''urine''.

The revision reads as follows:

§ 40. 139 On what basis does the MRO verify text results involving 6-acetylmorphine, codeine, and morphine?

* * * * *

(b) In the absence of 6–AM, if the laboratory confirms the presence of either morphine or codeine equal to or above 15,000 ng/mL (in urine) or equal to or above 150 ng/mL (in oral fluid), you must verify the test result as positive, unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see § 40.137). Consumption of food products (*e.g.,* poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.

* * * * *

■ 67. Amend § 40.141 by revising paragraph (b) to read as follows:

§ 40.141 How does the MRO obtain information for the verification decision?

* * * * *

(b) If the employee asserts that the presence of a drug or drug metabolite in his or her specimen results from taking prescription medication (*i.e.,* a legally valid prescription consistent with the Controlled Substances Act), you must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides.

(1) You may contact the employee's physician or other relevant medical personnel for further information.

(i) If you decide to contact the employee's pharmacy to authenticate whether the prescription offered by the employee was filled by the pharmacy,

you or staff under your operational control can contact the pharmacy.

(ii) If you utilize staff to perform the inquiry in paragraph (b)(1)(i) of this section, you must ensure operational control over the hiring, firing, evaluation of the staff and you must oversee the performance of the function of contacting a pharmacy to authenticate specific prescription(s) (*e.g.,* outline or script what the staff will ask the pharmacy; occasionally monitor calls to assure quality control; or other methods to ensure the staff are properly conducting the calls with the pharmacies).

(2) You may request an HHS-certified laboratory with validated protocols (*see* § 40.81(c)) to conduct testing for D,L stereoisomers of amphetamine and methamphetamine or testing for tetrahydrocannabivarin (THC–V) when verifying lab results, as you determine necessary.

§ 40.145 [Amended]

■ 68. Amend § 40.145 in the last sentence of paragraph (g)(3) by removing the word ''urine'' and adding the word ''drug'' in its place and in paragraph (h) introductory text by adding the word ''urine'' before the word ''result''

■ 69. Amend § 40.151 by revising paragraphs (a), (b), (g), and (i) to read as follows:

§ 40.151 What are MROs prohibited from doing as part of the verification process?

* * * * *

(a) You must not consider any evidence (verbal or written information) from any drug tests that are not collected or tested in accordance with this part. For example, if an employee tells you he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result, you are required to ignore this test result.

(b) It is not your function to make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (*e.g.,* concerning allegations that the collector left the area or left open collection containers where other people could access them.)

* * * * *

(g) You must not accept an assertion that there is a legitimate medical explanation for the presence of PCP, 6–AM, MDMA, or MDA in a specimen.

* * * * *

(i) You must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce a urine specimen for which the creatinine level is below the laboratory's limit of detection. There are no physiological means through which a person can produce a urine specimen having this characteristic.

■ 70. Amend § 40.159 by revising paragraphs (a)(1) and (a)(5)(ii) to read as follows:

§ 40.159 What does the MRO do when a drug test result is invalid?

(a) * * *

(1) Discuss the laboratory results with a certifying scientist to determine if the primary specimen should be tested at another HHS-certified laboratory. If the laboratory did not contact you as required by §§ 40.91(e) and 40.96(b), you must contact the laboratory.

* * * * *

(5) * * *

(ii) Report to the DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation. Recommend to the employer that an alternate specimen should be collected if practicable (*e.g.,* oral fluid, if the specimen was urine).

* * * * *

■ 71. Amend § 40.161 by revising paragraphs (a) and (c) to read as follows:

§ 40.161 What does the MRO do when a drug test specimen is rejected for testing?

* * * * *

(a) Place a check mark in the ''Test Cancelled'' box (Step 6) on Copy 2 (or a legible copy of Copy 3–5) of the CCF and enter the reason on the ''Remarks'' line. If you do not have Copy 2 (or a legible copy of Copy 3–5), then enter ''Test Cancelled'' and the reason for the cancellation on a report in the format required under § 40.163(c).

* * * * *

(c) You may only report a test cancelled because of a ''rejected for testing'' laboratory result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature. If you do not have Copy 2 (or a legible copy of Copy 3–5), then enter ''Test Cancelled'' and the reason for the cancellation on a report in the format required under § 40.163(c).

■ 72. Amend § 40.163 in paragraph (c)(2) by removing the words ''donor SSN or employee ID number'' and adding in their place the words ''SSN or employee ID No.'' and by revising paragraph (e).

The revision reads as follows:

§ 40.163 How does the MRO report drug test results?

* * * * *

(e) If you use a written report as provided in paragraph (c) of this section to report results, you must retain a copy of the written report. If you use the electronic data file to report negatives, as provided in paragraph (d) of this section, you must retain a retrievable copy of that report in a format suitable for inspection and audit by a DOT representative. In either case, you must keep the completed Copy 2 of the CCF. When completing Copy 2, either the MRO must sign and date it (for both negatives and non-negatives) or MRO staff must stamp and date it (for negatives only).

* * * * *

■ 73. Amend § 40.177 by revising paragraphs (a) through (c) to read as follows:

§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

(a) As the laboratory testing the split specimen, you must test the split specimen for the drug(s)/drug metabolite(s) confirmed in the primary specimen.

(b) You must conduct this test without regard to the cutoff concentrations of § 40.85 or § 40.91, as applicable.

(c) If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported in the primary specimen, you must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). You should conduct the same validity tests as you would conduct on a primary specimen set forth in § 40.87 or § 40.93, as applicable.

* * * * *

§ 40.179 [Amended]

■ 74. Amend § 40.179 in paragraph (a) by removing ''§ 40.95'' and adding in its place ''§ 40.89 or § 40.93, as applicable''.

■ 75. Revise § 40.181 to read as follows:

§ 40.181 What does the second laboratory do with the split specimen when it is tested to reconfirm a substituted test result?

As the laboratory testing a urine split specimen, you must test the split specimen using the confirmatory tests for creatinine and specific gravity, using the criteria set forth in § 40.88.

§ 40.187 [Amended]

■ 76. Amend § 40.187 in paragraphs (b)(1), (c)(1)(iii), and (c)(2)(iii) by removing ''Appendix D'' and adding in

its place ''appendix F'' and in paragraph (e)(3) by removing ''appendix D'' and adding in its place ''appendix F''.

■ 77. Amend § 40.191 by revising paragraphs(a)(2) through (11), (c), and (d)(1) to read as follows:

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) * * *

(2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the collection site before the testing process commences (*see* § 40.63(c) or § 40.72(e), as applicable) for a pre-employment test is not deemed to have refused to test. The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;

(3) Fail to provide a specimen for any drug test required by this part or DOT agency regulations. Provided that an employee who does not provide a specimen because he or she has left the testing site before the testing process commences (*see* § 40.63(c) or § 40.72(e), as applicable) for a pre-employment test is not deemed to have refused to test. The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;

(4) In the case of a directly observed or monitored urine collection in a drug test, fail to permit the observation or monitoring of an employee's provision of a specimen (*see* §§ 40.67(m) and 40.69(g));

(5) Fail to provide a sufficient amount of specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (*see* § 40.193(d)(2));

(6) Fail or decline to take an additional drug test the employer or collector has directed you to take (*see,* for instance, § 40.197(b) as applicable);

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under § 40.193(c). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;

(8) Fail to cooperate with any part of the testing process (*e.g.,* refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector, fail to remove objects from mouth, fail to permit inspection of the oral cavity, or fail to complete a rinse when requested);

(9) For an observed urine collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;

(10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process; or

(11) Admit to the collector or MRO that you adulterated or substituted the specimen.

* * * * *

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.

(d) * * *

(1) As the collector, you must note the actions that may constitute a refusal in the ''Remarks'' line (Step 2), and sign and date the CCF. The collector does not make the final decision about whether the employee's conduct constitutes a refusal to test; the employer has the sole responsibility to decide whether a refusal occurred, as stated in § 40.355(i), the employer has a non-delegable duty to make the decision about whether the employee has refused to test.

* * * * *

■ 78. Revise § 40.193 to read as follows:

§ 40.193 What happens when an employee does not provide a sufficient amount of specimen for a drug test?

(a) If an employee does not provide a sufficient amount of specimen to permit a drug test (*i.e.,* 45 mL of urine in a single void, or 2mL oral fluid in a single sampling, as applicable) you, as the collector, must provide another opportunity to the employee to do so. In accordance with the employer's instructions, this can be done using the same specimen type as the original collection or this can be done by a collector qualified to use an alternate specimen collection for this purpose.

(1) If you change to an alternate specimen collection at this point (*i.e.,* from urine to oral fluid; or from oral fluid to urine), the next collection begins under § 40.61(e) for urine or § 40.72 for oral fluid collection.

(i) If you proceed with an alternate specimen collection, discard the insufficient specimen and proceed with the next specimen collection.

(ii) If you proceed with an alternate specimen collection, discard the CCF for the insufficient specimen and begin a new CCF for the next specimen collection with a notation in the remarks section of the new CCF.

(b)(1) As the collector, you must do the following when continuing with a urine specimen collection under this section:

(i) Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (*see* § 40.65(b) and (c)).

(ii) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCF (Step 2), and inform the employee of the time at which the three-hour period begins and ends.

(iii) If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, you must discontinue the collection, note that fact on the ''Remarks'' line of the CCF (Step 2), and immediately notify the DER of the conduct as provided in § 40.191(e)(1); the employer decides whether the situation is deemed to be a refusal.

(iv) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the ''Remarks'' line of the CCF (Step 2), and immediately notify the DER. You must also discard any specimen the employee previously provided, including any specimen that is ''out of temperature range'' or shows signs of tampering. In the remarks section of the CCF that you will distribute to the MRO and DER, note the fact that the employee provided an ''out of temperature range specimen'' or ''specimen that shows signs of tampering'' and that it was discarded

because the employee did not provide a second sufficient specimen.

(2) As the collector, you must do the following when continuing with an oral fluid specimen collection under this section:

(i) If the employee demonstrates an inability to provide a specimen after 15 minutes of using the collection device, and if the donor states that he or she could provide a specimen after drinking some fluids, urge the employee to drink (up to 8 ounces) and wait an additional 10 minutes before beginning the next specimen collection (a period of up to one hour must be provided, or until the donor has provided a sufficient oral fluid specimen, whichever occurs first). If the employee simply needs more time before attempting to provide an oral fluid specimen, the employee is not required to drink any fluids during the one-hour wait time. It is not a refusal to test if the employee declines to drink. The employee must remain at the collection site, in a monitored area designated by the collector, during the wait period.

(ii) If the employee has not provided a sufficient specimen within one hour of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the ''Remarks'' line of the CCF (Step 2), and immediately notify the DER.

(3) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must send or fax these copies to the MRO and DER within 24 hours or the next business day.

(c) As the DER, if the collector informs you that the employee has not provided a sufficient amount of specimen (*see* paragraph (b) of this section), you must, after consulting with the MRO, direct the employee to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a urine (*see* paragraph (b)(1) of this section) or oral fluid (*see* paragraph (b)(2) of this section) sufficient specimen, but not both. The evaluation and MRO determination required by this section only applies to the oral fluid or the urine insufficient specimen that was the final methodology at the collection site. (The MRO may perform this evaluation if the MRO has appropriate expertise.)

(1) As the MRO, if another physician will perform the evaluation, you must provide the other physician with the following information and instructions:

(i) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of specimen to complete the test;

(ii) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;

(iii) That the referral physician must agree to follow the requirements of paragraphs (d) through (g) of this section.

(2) [Reserved]

(d) As the referral physician conducting this evaluation, you must recommend that the MRO make one of the following determinations:

(1) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. As the MRO, if you accept this recommendation, you must:

(i) Check ''Test Cancelled'' (Step 6) on the CCF; and

(ii) Sign and date the CCF.

(2) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. As the MRO, if you accept this recommendation, you must:

(i) Check the ''Refusal to Test'' box and ''Other'' box in Step 6 on Copy 2 of the CCF and note the reason next to the ''Other'' box and on the ''Remarks'' lines, as needed.

(ii) Sign and date the CCF.

(e) For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (*e.g.,* a urinary system dysfunction in the case of a urine test or autoimmune disorder in the case of an oral fluid test), or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of ''situational anxiety'' or dehydration.

(f) As the referral physician making the evaluation, after completing your evaluation, you must provide a written statement of your recommendations and the basis for them to the MRO. You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.

(g) If, as the referral physician making this evaluation in the case of a pre-employment, return-to-duty, or follow-up test, you determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of specimen for a very long or indefinite period of time, you must set forth your determination and the reasons for it in your written statement to the MRO. As the MRO, upon receiving such a report, you must follow the requirements of § 40.195, where applicable.

(h) As the MRO, you must seriously consider and assess the referral physician's recommendations in making your determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. You must report your determination to the DER in writing as soon as you make it.

(i) As the employer, when you receive a report from the MRO indicating that a test is cancelled as provided in paragraph (d)(1) of this section, you take no further action with respect to the employee. If the test reason was 'random', the employee remains in the random testing pool.

■ 79. Amend § 40.195 by revising the section heading to read as follows:

§ 40.195 What happens when an individual is unable to provide a sufficient amount of specimen for a pre-employment, follow-up, or return-to-duty test because of a permanent or long-term medical condition?

* * * * *

■ 80. Amend § 40.197 by revising the section heading to read as follows:

§ 40.197 What happens when an employer receives a report of a dilute urine specimen?

* * * * *

■ 81. Amend § 40.199 by revising paragraph (b)(7) and adding paragraphs (b)(8) and (9) to read as follows:

§ 40.199 What problems always cause a drug test to be cancelled?

* * * * *

(b) * * *

(7) Because of leakage or other causes, there is an insufficient amount of specimen in the primary specimen bottle for analysis and the specimens cannot be re-designated (*see* § 40.83(h)).

(8) For an oral fluid collection, the collector used an expired device at the time of collection.

(9) For an oral fluid collection, the collector failed to enter the expiration date in Step 4 of the CCF and the laboratory confirmed that the device was expired.

* * * * *

§ 40.201 [Amended]

■ 82. Amend § 40.201 in the first sentence of paragraph (f) by removing the word ''urine'' and adding in its place the word ''specimen''.

■ 83. Amend § 40.207 by adding paragraph (d) to read as follows:

§ 40.207 What is the effect of a cancelled drug test?

* * * * *

(d) If a test is cancelled for a correctible flaw (*i.e.,* § 40.203 or § 40.205), only the MRO who cancelled the test can reverse the cancellation and must do so within 60 days of the cancellation. After 60 days, the MRO who cancelled the test cannot reverse the cancellation without the permission of ODAPC. For example, if an MRO cancels a test because the MRO did not receive a copy of the CCF, but later receives a copy of the CCF, the MRO may reverse the decision to cancel the test within 60 days. After 60 days, the MRO must contact ODAPC for permission to reverse the cancellation. An MRO must not reverse the cancellation of a test that the laboratory has reported as rejected for testing, as described in § 40.83(g). A laboratory is not authorized to reverse a cancellation due to a fatal flaw, as described in § 40.199.

■ 84. Revise § 40.208 to read as follows:

§ 40.208 What problems require corrective action but do not result in the cancellation of a test?

(a) If, as a laboratory, collector, employer, or other person implementing the DOT drug testing program, you become aware that any of the following omissions listed in paragraphs (a)(1) through (3) of this section occurred, you must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure the problem does not recur:

(1) For a urine collection, the specimen temperature on the CCF was not checked and the ''Remarks'' line did not contain an entry regarding the temperature being out of range; or

(2) For an oral fluid collection, the collector failed to check the box in Step 2 of the CCF that indicates ''Each Device was Within Expiration Date'' but the collector entered the ''Split Specimen Device Expiration Date'' in Step 4 of the CCF.

(3) For an oral fluid collection, the collector erred by entering the expiration date as the ''Primary/Single Specimen Device Expiration Date'' instead of entering the date as the ''Split Specimen Device Expiration Date'' in Step 4 of the CCF.

(b) The errors listed in paragraph (a) of this section do not result in the cancellation of the test.

(c) As an employer or service agent, the errors listed in paragraph (a) of this section, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or subpart R of this part.

■ 85. Amend § 40.209 in paragraph (b)(1) by removing ''social security number'' and adding in its place ''SSN or Employee ID No.'', in paragraph (b)(3) by removing ''(see § 40.33)'' and adding in its place ''(*see* §§ 40.33 or 40.35)'', in paragraph (b)(7) by removing ''§ 40.41'' and adding in its place ''§ 40.42'', and by adding paragraph (b)(11).

The addition reads as follows:

§ 40.209 What procedural problems do not result in cancellation of a test and do not require correction?

* * * * *

(b) * * *

(11) The failure to use a new CCF for a second collection after an insufficient specimen was conducted under a different methodology (*e.g.,* failing to use a new CCF for an oral fluid test after an insufficient quantity of urine was produced on a urine test.)

* * * * *

■ 86. Revise § 40.210 to read as follows:

§ 40.210 What kinds of drug tests are permitted under the regulations?

Both urine and oral fluid specimens are authorized for collection and testing under this part. An employer can use one or the other, but not both at the beginning of the testing event. For example, if an employee is sent for a test, either a urine or oral fluid specimen can be collected, but not both simultaneously. However, if there is a problem in the collection that necessitates a second collection (*e.g.,* insufficient quantity of urine, temperature out of range, or insufficient saliva), then a different specimen type could be chosen by the employer (*i.e.,* through a standing order or a discussion with the collector) or its service agent (*i.e.,* if there is no standing order and the service agent cannot contact the DER) to complete the collection process for the testing event. Only urine and oral fluid specimens screened and confirmed at HHS-certified laboratories (*see* § 40.81) are allowed for drug testing under this part. Point-of-collection (POC) urine, POC oral fluid drug testing, hair testing, or instant tests are not authorized.

§ 40.225 [Amended]

■ 87. Amend § 40.225 in paragraph (a) by removing ''Appendix G'' and adding in its place ''appendix I''.

■ 88. Amend § 40.261 by revising paragraphs (a)(2) and (3) and (b), redesignating paragraph (c) as paragraph (c)(1), and adding paragraph (c)(2)

The revisions and addition read as follows.

§ 40.261 What is a refusal to take an alcohol test?

* * * * *

(a) * * *

(2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the collection site before the testing process commences (*see* § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;

(3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; *Provided* that an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (*see* § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;

* * * * *

(b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.

(c) * * *

(2) As the BAT or STT, you must note the actions that may constitute a refusal in the ''Remarks'' line (Step 3), and sign and date the ATF. The BAT or STT does not make the final decision about whether the employee's conduct constitutes a refusal to test; the employer has the sole responsibility to decide whether a refusal occurred, as stated in § 40.355(i), the employer has a non-delegable duty to make the decision about whether the employee has refused to test.

* * * * *

■ 89. Amend § 40.281 by adding paragraph (f) to read as follows:

§ 40.281 Who is qualified to act as a SAP?

* * * * *

(f) *Limitation.* If you are an otherwise qualified SAP under this part, you must abide by the geographic limitations applicable to your credential when performing remote evaluations. You must not conduct an evaluation that exceeds your geographic limitations.

§ 40.283 [Amended]

■ 90. Amend § 40.283 in paragraph (c) by removing ''Appendix E'' and adding in its place ''appendix G''.

§ 40.285 [Amended]

■ 91. Amend § 40.285 in paragraph (b) by removing the word ''urine''.

■ 92. Amend § 40.291 by revising paragraphs (a)(1) and (3) to read as follows:

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT Agency drug and alcohol testing regulations?

(a) * * *

(1) Making a clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. At the SAP's discretion, this assessment or evaluation may be performed face-to-face in-person or remotely. If a SAP is not prohibited from using technology within the parameters of the SAP's State-issued license or other credential(s), a remote evaluation must be must be conducted in accordance with the following criteria:

(i) The technology must permit real-time audio and visual interaction between the SAP and the employee; and

(ii) The quality of the technology (*e.g.,* speed of the internet connection and clarity of the video display) must be sufficient to allow the SAP to gather all the visual and audible information the SAP would otherwise gather in an in-person face-to-face interaction, while providing security to protect the confidentiality of the communications at the level expected by industry standards for remote substance abuse evaluations.

* * * * *

(3) Conducting a follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. This assessment or evaluation may be performed face-to-face in-person or remotely. A face-to-face remote evaluation must meet the criteria in paragraphs (a)(1)(i) and (ii) of this section.

* * * * *

■ 93. Amend § 40.293 by:

■ a. Removing the words ''face-to-face'', and after the words ''clinical evaluation,'' adding the words ''meeting the requirements of § 40.291(a)(1)'' in paragraph (a);

■ b. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h); and

■ c. Adding new paragraph (e).

The addition reads as follows:

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

* * * * *

(e) You must assess and clinically evaluate each employee on an individual basis and use your professional judgment to determine education and/or treatment, as well as a follow-up testing plan unique to the needs of the individual employee. For example, do not require the same and/or substantially similar education, treatment, and/or follow-up testing plan for most of the employees you assess.

* * * * *

■ 94. Amend § 40.297 by adding paragraph (c) to read as follows:

§ 40.297 Does anyone have the authority to change an SAP's initial evaluation?

* * * * *

(c) The SAP, who is otherwise fully qualified under this subpart, must not perform evaluations outside the geographic jurisdiction for their credential(s). If the SAP who made the evaluation exceeds their geographic jurisdiction, the employee will not be required to seek the evaluation of a second SAP.

§ 40.301 [Amended]

■ 95. Amend § 40.301 in paragraph (b)(2) by removing the words ''face-to-face'', and after the words ''clinical interview'', adding the words ''meeting the requirements of § 40.291(a)(1)''.

■ 96. Amend § 40.305 by adding paragraph (d) to read as follows:

§ 40.305 How does the return-to-duty process conclude?

* * * * *

(d) As the employer, if a SAP who is otherwise fully qualified under this subpart performed a remote evaluation of the employee outside the geographic jurisdiction for their credential(s), the employee who they evaluated will not be required to seek the evaluation of a second SAP. If you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you will proceed with the requirements of paragraph (a) of this section.

■ 97. Amend § 40.307 by adding paragraph (g) to read as follows:

§ 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

* * * * *

(g) As the employer, SAP, or other service agent, you must not provide to the employee a copy of their drug and/or alcohol follow-up testing schedule prescribed by the SAP. No employer, SAP, or other service agent will indicate to the employee what the frequency or duration of the employee's follow-up testing schedule will be. The SAP can require follow-up testing for either or both drugs and alcohol for a drug-related or an alcohol-related violation.

§ 40.311 [Amended]

■ 98. Amend § 40.311 in paragraphs (c)(4), (d)(4), and (e)(4) after the word ''Date(s)'' by adding the words ''and format (*i.e.,* face-to-face or remote)'' and in paragraphs (c)(1), (d)(1), and (e)(1) by removing ''SSN'' and adding in its place ''SSN or employee ID No.''.

■ 99. Amend § 40.327 by:

■ a. Removing the reference ''paragraph (c)'' and adding in its place ''paragraph (d)'' in paragraph (a) introductory text;

■ b. Redesignating paragraph (c) as paragraph (d); and

■ c. Adding a new paragraph (c).

The addition reads as follows:

§ 40.327 When must the MRO report medical information gathered in the verification process?

* * * * *

(c) The MRO must not report such medical information using the CCF. Instead, the MRO must provide the information in a separate written communication (*e.g.,* letter, secure email). The information must state the specific nature of the MRO's safety concern (*e.g.,* the effects of a medication the employee is taking, the employee's underlying medical condition that the employee disclosed to the MRO).

* * * * *

§ 40.345 [Amended]

■ 100. Amend § 40.345 in paragraph (b) by removing ''Appendix F'' and adding in its place ''appendix H''.

§ 40.355 [Amended]

■ 101. Amend § 40.355 in Example 3 to paragraph (n) by removing the word ''urine''.

§ 40.365 [Amended]

■ 102. Amend § 40.365 in paragraph (b)(8) by removing the words ''face-to-

face interviews'' and adding in their place the words ''without interviews meeting the requirements of § 40.291(a)(1)''.

Appendices E Through H to Part 40 [Redesignated as Appendices G Through J to Part 40]

■ 103. Redesignate appendices E through H to part 40 as appendices G through J to part 40.

Appendix C to Part 40 [Redesignated as Appendix E to Part 40]

■ 104. Redesignate appendix C to part 40 as appendix E to part 40.

Appendix C to Part 40 [Reserved]

■ 105. Add reserved appendix C to part 40.

Appendix D to Part 40 [Redesignated as Appendix F to Part 40]

■ 106. Redesignate appendix D to part 40 as appendix F to part 40.

Appendix B to Part 40 [Redesignated as Appendix D to Part 40]

■ 107. Redesignate appendix B to part 40 as appendix D to part 40.

■ 108. Add new appendix B to part 40 to read as follows:

Appendix B to Part 40—Oral Fluid Collection Kit Contents

1. Oral Fluid Collection Device

a. A single device, which can be subdivided in the employee's presence into an ''A'' specimen and a ''B'' split specimen bottle sufficient for laboratory testing, that is either of the following:

(1) An oral fluid collection device made to collect a sufficient amount of oral fluid to permit an HHS-certified laboratory to analyze the specimen(s). For example, a device that directs the oral fluid into two separate collection bottles.

(2) A device that uses buffering solution that collects a specimen using a single pad or dual pads joined for insertion together into the same region of the mouth, which can be subdivided into two separate collection bottles. Such a buffered device may use a diluent (or other component, process, or method that modifies the volume of the testable specimen). The volume specifications for the device must be consistent with those set by HHS.

b. Must have unit markings or other indicators that demonstrate the adequacy of the volume of oral fluid specimen collected.

c. Must be sufficiently transparent to permit a visual assessment of the contents without opening the specimen bottle.

d. Must be individually packaged in an easily visible tamper-evident system.

e. Must have the device's expiration date on the specimen bottles sent to the laboratory (*i.e.,* the shortest expiration date of any component).

f. Must not have components that substantially affect the composition of drugs and/or drug metabolites in the oral fluid specimen and/or interfere with an accurate analysis of the specimen.

g. Must maintain the integrity of the specimen during storage and transport so the specimen can be tested in an HHS-certified laboratory.

h. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit without concealing the expiration date on the bottles, without damage to the seal when the collector dates and the employee initials it.

i. Must be approved by HHS for use by the specific HHS-certified laboratory that will test the specimen gathered by this device.

2. Instructions

Must include the manufacturer's instructions within the device's packaging. The instructions must provide sufficient detail to allow for an error-free collection when the instructions are followed.

3. Leak-Resistant Plastic Bag

a. Must have two sealable compartments or pouches that are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork, as applicable.

b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

4. Absorbent Material

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

5. Shipping Container

a. Must be designed to adequately protect the specimen bottles from damage during shipment of the specimens from the collection site to the laboratory (*e.g.,* standard courier box, small cardboard box, plastic container).

b. May be made available separately at collection sites rather than being part of an actual collection device sent to collection sites.

c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the leak-resistant plastic bags from the collection site to the laboratory.

■ 109. Revise the newly redesignated appendix D to read as follows:

Appendix D to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to Employers

The following items are required on each laboratory report:

Reporting Period: (inclusive dates)
Laboratory Identification: (name and address)
Employer Identification: (name; may include Billing Code or ID code)
C/TPA Identification: (where applicable; name and address)

A. Urine Specimens

1. Urine Specimen Results Reported (Total Number) By Test Reason

(a) Pre-employment (number)
(b) Post-Accident (number)
(c) Random (number)
(d) Reasonable Suspicion/Cause (number)
(e) Return-to-Duty (number)
(f) Follow-up (number)
(g) Type of Test Not Noted on CCF (number)

2. Urine Specimens Reported

(a) Negative (number)
(b) Negative and Dilute (number)

3. Urine Specimens Reported as Rejected for Testing (Total Number) by Reason

(a) Fatal flaw (number)
(b) Uncorrected Flaw (number)

4. Urine Specimens Reported as Positive (Total Number) by Drug

(a) Marijuana Metabolite (number)
(b) Cocaine Metabolite (number)
(c) Opioids (number)
  (1) Codeine (number)
  (2) Morphine (number)
  (3) 6–AM (number)
  (4) Hydrocodone (number)
  (5) Hydromorphone (number)
  (6) Oxycodone (number)
  (7) Oxymorphone (number)
(d) Phencyclidine (number)
(e) Amphetamines (number)
  (1) Amphetamine (number)
  (2) Methamphetamine (number)
  (3) MDMA (number)
  (4) MDA (number)

5. Urine Adulterated (Number)

6. Urine Substituted (Number)

7. Urine Invalid Result (Number)

B. Oral Fluid Specimens

1. Oral Fluid Specimen Results Reported (Total Number) by Test Reason

(a) Pre-employment (number)
(b) Post-Accident (number)
(c) Random (number)
(d) Reasonable Suspicion/Cause (number)
(e) Return-to-Duty (number)
(f) Follow-up (number)
(g) Type of Test Not Noted on CCF (number)

2. Oral Fluid Specimens Reported

(a) Negative (number)
(b) Negative and Dilute (number)

3. Oral Fluid Specimens Reported as Rejected for Testing (Total Number) by Reason

(a) Fatal flaw (number)
(b) Uncorrected Flaw (number)

4. Oral Fluid Specimens Reported as Positive (Total Number) by Drug

(a) Marijuana (number)
(b) Cocaine and/or Cocaine Metabolite (number)
(c) Opioids (number)
  (1) Codeine (number)
  (2) Morphine (number)
  (3) 6–AM (number)
  (4) Hydrocodone (number)
  (5) Hydromorphone (number)
  (6) Oxycodone (number)

(7) Oxymorphone (number)
(d) Phencyclidine (number)
(e) Amphetamines (number)
(1) Amphetamine (number)
(2) Methamphetamine (number)
(3) MDMA (number)
(4) MDA (number)

5. Oral Fluid Adulterated (Number)

6. Oral Fluid Substituted (Number)

7. Oral Fluid Invalid Result (Number)

■ 110. Revise newly redesignated appendix E to part 40 to read as follows:

Appendix E to Part 40—Drug Testing Semi-Annual Laboratory Report to DOT

Mail, fax or email to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

Fax: (202) 366–3897.

Email: ODAPCWebMail@dot.gov.

The following items are required on each report:

Reporting Period: (inclusive dates)
Laboratory Identification: (name and address)
1. Specimen Type:
—oral fluid or urine
2. DOT agency
—FMCSA, FAA, FRA, FTA, PHMSA, or USCG
3. Test Reason
—Pre-Employment, Random, Reasonable Suspicion/Cause, Post-Accident, Return-to-Duty, Other, and Follow-up
A. DOT Specimen Results Reported (total number)
B. Negative Results Reported (total number)
1. Negative (number)
2. Negative-Dilute (number)
C. Rejected for Testing Results Reported (total number) By Reason
1. Fatal flaw (number)
2. Uncorrected Flaw (number)
D. Positive Results Reported (total number) By Drug
1. Marijuana or Marijuana Metabolite (number)
2. Cocaine and/or Cocaine Metabolite (number)
3. Opioids (number)
a. Codeine (number)
b. Morphine (number)
c. 6–AM (number)
d. Hydrocodone (number)
e. Hydromorphone (number)
f. Oxycodone (number)
g. Oxymorphone (number)
4. Phencyclidine (number)
5. Amphetamines (number)
a. Amphetamine (number)
b. Methamphetamine (number)
c. MDMA (number)
d. MDA (number)
E. Adulterated Results Reported (total number) By Reason (number)
F. Substituted Results Reported (total number)
G. Invalid Results Reported (total number) By Reason (number)

■ 111. Revise newly redesignated appendix F to part 40 to read as follows:

Appendix F to Part 40—Report Format: Split Specimen Failure To Reconfirm

Mail, fax, or submit electronically to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

Fax: (202) 366–3897.

Submit Electronically: https://www.transportation.gov/odapc/mro-split-specimen-cancellation-notification.

The following items are required on each report:

1. MRO name, address, phone number, and fax number.
2. Collection site name, address, and phone number.
3. Date of collection.
4. Specimen I.D. number.
5. Specimen type.
6. Laboratory accession number.
7. Primary specimen laboratory name, address, and phone number.
8. Date result reported or certified by primary laboratory.
9. Split specimen laboratory name, address, and phone number.
10. Date split specimen result reported or certified by split specimen laboratory.
11. Primary specimen results (*e.g.,* name of drug, adulterant) in the primary specimen.
12. Reason for split specimen failure-to-reconfirm result (*e.g.,* drug or adulterant not present, specimen invalid, split not collected, insufficient volume).
13. Actions taken by the MRO (*e.g.,* notified employer of failure to reconfirm and requirement for re-collection).
14. Additional information explaining the reason for cancellation.
15. Name of individual submitting the report (if not the MRO).

Appendix H to Part 40 [Amended]

■ 112. Amend newly redesignated appendix H under ''Drug Testing Information'' by removing the reference ''§ 40.129(d)'' and adding in its place the reference ''§ 40.129(e)''.

PART 219—CONTROL OF ALCOHOL AND DRUG USE

■ 113. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461 note; Div. A, Sec. 412, Public Law 110–432, 122 Stat. 4889 (49 U.S.C. 20140 note); Sec. 8102, Public Law 115–271, 132 Stat. 3894; and 49 CFR 1.89.

§ 219.4 [Amended]

■ 114. Amend § 219.4 in paragraphs (a) introductory text and (b)(1) and (2) by removing the term ''return-to-service'' and adding in its place the term ''return-to-duty'' and in paragraph (b)(2) by removing ''paragraph (d) of this section'' and adding ''§ 219.104(d)''.

§ 219.11 [Amended]

■ 115. Amend § 219.11 in paragraph (a)(2) by removing the word ''urine'' and adding in its place ''body fluid'' and in paragraph (h) by removing the words ''urine or blood'' and adding in their place the words ''body fluid'' and by adding ''or oral fluid from a sampling'' after the word ''void''.

§ 219.617 [Amended]

■ 116. Amend § 219.617 in paragraph (b)(2) by removing the word ''urine'' and adding in its place ''body fluid''.

§ 219.619 [Amended]

■ 117. Amend § 219.619 by removing the word ''urine'' and adding in its place ''body fluid'' in two places.

§ 219.621 [Amended]

■ 118. Amend § 219.621 in paragraph (a) by removing the word ''urine'' and adding in its place ''body fluid''.

§ 219.903 [Amended]

■ 119. Amend § 219.903 in paragraph (a) by removing the word ''urine'' and adding in its place ''body fluid''.

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

■ 120. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 240.119 [Amended]

■ 121. Amend § 240.119 in paragraphs (e)(4)(iv)(A) and (f)(1)(iii) by removing the word ''urine'' and adding in its place ''body fluid''.

PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

■ 122. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 242.115 [Amended]

■ 123. Amend § 242.115 in paragraphs (e)(4)(iv)(A) and (f)(1)(iii) by removing the word ''urine'' and adding in its place ''body fluid''.

PART 382—CONTROLLED SUBSTANCES AND ACOHOL USE AND TESTING

■ 124. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Public Law 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 382.107 [Amended]

■ 128. Amend § 382.107:

■ a. In the definitions of ''Confirmation (or confirmatory) drug test'' and ''Confirmation (or confirmatory) validity'' by adding ''or oral fluid'' after the word ''urine'';

■ b. In the definition of ''Controlled substances'' by removing ''§ 40.85'' and adding in its place ''§ 40.82'';

■ c. In paragraphs (3) and (5) to the definition of ''Refuse to submit (to an alcohol or controlled substances test'' by adding ''or oral fluid'' after the word ''urine'' each place it appears; and

■ d. In paragraph (1) to the definition of ''Screening test (or initial test)'' by adding ''or oral fluid'' after the word ''urine''.

§ 382.401 [Amended]

■ 129. Amend § 382.401 in paragraph (b)(3) by adding the words ''and MRO reversal of canceled controlled substances test results'' after the words ''canceled controlled substances test results'' and in paragraph (c)(1)(vii) by adding ''or oral fluid'' after the word ''urine''.

§ 382.403 [Amended]

■ 130. Amend § 382.403 in the third sentence of paragraph (b) by removing ''appendix H'' and adding in its place ''appendix J''.

§ 382.409 [Amended]

■ 131. Amend § 382.409 in paragraph (b) by adding the words ''and MRO reversal of cancelled controlled substances test results'' after the words ''test results''.

§ 382.705 [Amended]

■ 132. Amend § 382.705 in paragraph (a)(2)(vii)(D) by adding ''or oral fluid'' after the word ''urine''.

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

■ 133. The authority citation for part 655 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.91.

§ 655.5 [Amended]

■ 134. Amend § 655.5 in paragraph (c) by removing ''400 Seventh Street SW'' and adding in its place ''1200 New Jersey Ave. SE''.

§ 655.15 [Amended]

■ 135. Amend § 655.15 in paragraph (e) by removing the word ''illegal'' and adding in its place the word ''prohibited''.

§ 655.44 [Amended]

■ 136. Amend § 655.44 in paragraph (a)(1)(i) by removing ''389.303(a)(1) or (b)(1)'' and adding in its place ''§ 382.303''.

§ 655.47 [Amended]

■ 137. Amend § 655.47 by adding the word ''covered'' before the word ''employee''.

§ 655.53 [Amended]

■ 138. Amend § 655.53 by removing the words ''collection person'' and by adding ''or oral fluid collector'' after the word ''urine''.

§ 655.61 [Amended]

■ 139. Amend § 655.61 in paragraph (a)(3) by removing the words ''an employee'' and adding in their place the words ''a covered employee''.

§ 655.71 [Amended]

■ 140. Amend § 655.71 in paragraph (c)(1)(v) by adding the words ''or oral fluid'' after the word ''urine'' and removing the word ''breathe'' and adding in its place ''breath''.

Signed in Washington, DC, on or around April 7, 2023.

Peter Paul Montgomery Buttigieg,

Secretary of Transportation.

Signed in Washington, DC, on or around April 7, 2023.

Billy Nolen,

Acting Administrator, Federal Aviation Administration.

[FR Doc. 2023–08041 Filed 5–1–23; 8:45 am]

BILLING CODE 4910–9X–P

Reader Aids

Federal Register

Vol. 88, No. 84

Tuesday, May 2, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

26467–27394 1
27395–27654 2

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10557 26473
10558 27395
Executive Orders:
14097 26471
Administrative Orders:
Memorandums:
Memorandum of April 19, 2023 26467
Memorandum of April 25, 2023 26469

7 CFR

Proposed Rules:
1260 27415

10 CFR

72 27397
429 ..... 26658, 27312
430 27312
Proposed Rules:
72 27418
430 26511

12 CFR

1006 26475

14 CFR

120 27596

26 CFR

Proposed Rules:
52 26512

27 CFR

Proposed Rules:
9 27420

32 CFR

158 26477

33 CFR

147 27402
165 27407
Proposed Rules:
165 ..... 26512, 27421
181 26514

34 CFR

Ch. II 27410

40 CFR

180 ..... 26495, 26498

42 CFR

410 27413
Proposed Rules:
411 26658
412 26658
419 26658
488 26658
489 26658
495 26658

45 CFR

Proposed Rules:
2500 27423

46 CFR

Proposed Rules:
25 26514
28 26514
108 26514
117 26514
133 26514
141 26514
160 26514
169 26514
180 26514
199 26514

47 CFR

Proposed Rules:
90 26515

49 CFR

40 27596
219 27596
240 27596
242 27596
382 27596
655 27596

50 CFR

648 26502
Proposed Rules:
17 27427

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 12, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/—layouts/PG/register.aspx.*

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.